CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 318

SAMPSON TULEE, APPELLANT

vs.

STATE OF WASHINGTON

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED JULY 28, 1941

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 318

SAMPSON TULEE, APPELLANT

vs.

STATE OF WASHINGTON

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

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1-2 In the Superior Court of the State of Washington

for Klickitat County

No. C. 672

THE STATE OF WASHINGTON, PLAINTIFF

vs.

SAMPSON TULEE, DEFENDANT

Information

Filed May 16, 1939

Comes now Edgar H. Canfield, Prosecuting Attorney of Klickitat County, State of Washington, and by this, his information, accuses Sampson Tulee, a Yakima Indian, of the crime of illegal taking and sale of commercial food fish committed as follows:

That on or about the 6th day of May 1939, and within the last 3 year * * * immediately preceding the filing of this information at Spearfish in Klickitat County, Washington, the above-named defendant, Sampson Tulee, then and there being, did then and there catch, with a dip bag net, certain food fish, to wit: Salmon, and did then and there sell the same commercially, without first having obtained a license for the taking thereof as required by Section 5703, Remington's Revised Statutes of Washington, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Washington.

Dated at Goldendale, Washington, this 16th day of May 1939.

EDGAR H. CANFIELD,
Prosecuting Attorney.

STATE OF WASHINGTON,
County of Klickitat, ss.

Edgar H. Canfield being first duly sworn on oath, says:

That I am the duly elected, qualified, and acting Prosecuting Attorney of Klickitat County, Washington; that I have read the foregoing information, know the contents thereof, and believe the same to be true.

2½ EDGAR H. CANFIELD.

Subscribed and sworn to before me this 16th day of May 1939.

[SEAL] R. M. SPOON,
Clerk of said Superior Court.

[File endorsement omitted.]

3 In the Superior Court of Klickitat County

[Title omitted.]

Warrant of arrest on information

May 16, 1939

The State of Washington, to the Sheriff of said Klickitat County, Greeting:

Whereas, in the Superior Court for said County, held at Goldendale the Prosecuting Attorney for said Klickitat County, did present and file an information on the part of the State of Washington, charging the above-named Sampson Tulee with the crime of Illegal taking and sale of commercial food fish, in that the said Sampson Tulee, then and there being, did then and there catch, with a dip bag net, certain food fish, to wit: Salmon; and did then and there sell the same commercially, without first having obtained a license for the taking thereof as required by Section 5703, Rem. Rev. Stat.

Now, therefore, in the name of the State of Washington, you are commanded forthwith to apprehend and arrest the said Sampson Tulee and bring him before this Court to answer said charge, and abide such further order as the Court may make in the premises.

Witness, the Hon. J. E. Stone, Judge of the said Superior Court, and the seal of said Court hereto affixed this 16th day of May 1939.

[SEAL] R. M. SPOON,
Clerk of said Superior Court.

Bail fixed at $———.

Sheriff's return

STATE OF WASHINGTON,
County of Klickitat, ss.

I hereby certify, that by virtue of the within warrant
31½ I have arrested the said Sampson Tulee, a Yakima Indian, and that he is now in the custody of C. R. House, Sheriff of Klickitat County.

Dated this 17th day of May 1939.

C. R. HOUSE,
Sheriff of County aforesaid.
By EDWARD KARGE,
Deputy.

Filed May 25, 1939.
R. M. Spoon, County Clerk.

4 In the Superior Court of Klickitat County

[Title omitted.]

Amended information

April 16, 1940

Comes now Edgar H. Canfield, prosecuting attorney, Klickitat County, Washington, and by this, his Information, accuses Sampson Tulee, a member of the Yakima Indian Tribe, with the crime of Illegal Taking and Sale of Commercial Food Fish committed as follows:

That on or about the 6th day of May 1939, and within the last year immediately preceding the filing of this amended information, at Spearfish on the Columbia River in Klickitat County, Washington, the above-named Sampson Tulee, a member of the Yakima Indian Tribe, then and there being, did then and there catch, at one of the usual and accustomed ancient fishing places of said Yakima Tribe of Indians as defined in the Yakima Indian Treaty of June 9, 1855 (12 Stat. 951), and off the reservation of said Indians, certain food fish, to wit: salmon, and did then and there sell the same commercially without first having obtained a license for the taking thereof as required by section 5703, Remington's Revised Statutes of Washington.

Contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Washington.

Dated at Goldendale, Washington, this 16th day of April 1940.

5 EDGAR H. CANFIELD,
Prosecuting Attorney.

STATE OF WASHINGTON,
County of Klickitat, ss.

Edgar H. Canfield, being first duly sworn, on oath says: that he is the duly elected, qualified, and acting prosecuting attorney of Klickitat County, Washington; that he has read the foregoing amended information, knows the contents thereof, and believes the same to be true.

EDGAR H. CANFIELD.

Subscribed and sworn to before me this 16th day of April 1940.
[SEAL] R. M. SPOON,
County Clerk.

[File endorsement omitted.]

6 In the Superior Court of Klickitat County

[Title omitted.]

Demurrer to Amended Information

April 16, 1940

Comes now the defendant, Sampson Tulee, and demurs to the amended information upon the ground and for the reason that

(1) The facts charged do not constitute a crime; and

(2) The amended information contains matter which, if true, constitutes a legal bar to the action.

Dated this 16th day of April 1940.

SAM M. DRIVER,
LYLE KEITH,
KENNETH R. L. SIMMONS,
Attorneys for defendant Sampson Tulee.

Copy Received.
EDGAR H. CANFIELD,
Pros. Atty.

[File endorsement omitted.]

7 In Superior Court of Klickitat County

[Title omitted.]

Arraignment

April 16, 1940

This cause coming on regularly for hearing in open Court on this 16th day of April 1940 upon the arraignment of said defendant to plead to the information heretofore filed against him. And comes Edgar H. Canfield, Prosecuting Attorney of said County and State, and the said defendant, Sampson Tulee, is brought to the bar of the court here with him comes his attorney, Lyle Keith, Assistant United States Attorney for the Eastern District of Washington.

Whereupon the information being read to said defendant and it being then demanded of him, the said defendant, if the name by which he stands charged therein is his true name, he answers, "It is." It being further demanded of him whether he is guilty of the charge or charges specified in said information, said de-

fendant thereupon pleads not guilty to the charge or charges as set out in the information.

It is hereby ordered that the plea of said defendant to the information specified be, and the same is hereby accepted and ordered filed, and that said defendant be, and he is hereby remanded to the custody of the Sheriff of Klickitat County, Washington.

Done in open Court this 16th day of April 1940.

J. E. STONE, *Judge.*

[File endorsement omitted.]

8 In Superior Court of Klickitat County

[Title omitted.]

Order overruling demurrer

April 16, 1940

This matter coming on to be heard this day upon the demurrer of defendant to the amended information filed herein, plaintiff being represented by Edgar H. Canfield, prosecuting attorney, and defendant being present and represented by Lyle Keith, assistant United States Attorney for the Eastern District of Washington, and both counsel having waived argument on said demurrer, it is, therefor',

Ordered that said demurrer be and the same is hereby overruled.

Done in open court this 16th day of April 1940.

J. E. STONE, *Judge.*

[File endorsement omitted.]

9 In Superior Court of Klickitat County

[Title omitted.]

Plaintiff's requested instructions

Filed May 10, 1940

10 Instruction No. 1

Members of the Jury:

This is a criminal action in which the state of Washington is plaintiff and Sampson Tulee is defendant. The state, by the prosecuting attorney, has charged the defendant with the crime of Illegal Taking and Sale of Commercial Food Fish, alleged to have been committed as follows:

That on or about the 6th day of May 1939, and within the last year immediately preceding the filing of this amended information, at Spearfish on the Columbia River in Klickitat County, Washington, the above-named Sampson Tulee, a member of the Yakima Indian Tribe, then and there being, did then and there catch, at one of the usual and accustomed ancient fishing places of said Yakima Indian Tribe of Indians as defined in the Yakima Indian Treaty of June 9, 1855 (12 Stat. 951), and off the Reservation of said Indians, certain food fish, to wit: salmon, and did then and there sell the same commercially without first having obtained a license for the taking thereof as required by Section 5703, Remington's Revised Statutes of Washington.

Instruction No. 2

To this information the defendant has interposed a plea of not guilty, thus raising every issue in this case and making it necessary for the State to prove to your satisfaction beyond a reasonable doubt every material element of the crime with which the accused stands charged.

Instruction No. 3

You are instructed that the laws of the state of Washington provide that every person, firm, or corporation using a dip bag net for the taking of salmon in the Columbia River shall pay therefor a license of $5.00 per year.

11

Instruction No. 4

You are instructed that the State of Washington has the right to regulate the taking of fish within its boundaries and in streams not included in or bordering upon the Yakima Indian Reservation. You are further instructed that this right of regulation includes the right of fixing licenses and providing for penalties in the event of noncompliance with whatever regulations are enacted. You are further instructed that the defendant Sampson Tulee is subject to these regulations so long as he is fishing on streams not included in or bordering upon the Yakima Indian Reservation, and that the fact of his being a member of the Yakima Tribe of Indians must not be considered so far as these instructions are concerned.

Instruction No. 5

A person accused of crime is presumed to be innocent. This presumption is not a matter of form merely which the jury may

disregard at pleasure, but continues throughout the trial until the same shall have been removed or overcome by proof of guilt beyond a reasonable doubt.

Instruction No. 6

These instructions are given by the Court as a whole and are so to be considered by the jury. Each and every instruction is to be considered in connection with all of the other instructions given.

Instruction No. 7

If you find that the State has proved to you beyond reasonable doubt all the elements of instruction No. 1, you will find the defendant guilty of illegal taking of food fish; to wit: salmon; on the other hand, if you find that the State has failed to prove all the elements beyond reasonable doubt, you will find the defendant not guilty.

12 Instruction No. 8

In conclusion let me remind you that each of you have taken a solemn oath that you will well and truly try this case and a true verdict render upon the evidence given on the trial and upon the law as now given you by the Court.

You have nothing whatever to do with the punishment to be inflicted in case of a violation of the law. The fact that punishment may follow a conviction cannot be considered by you, except insofar and only so far as it may tend to make you careful.

Neither must you allow yourself to be moved in the least by sympathy or influenced by prejudice. The question of guilt or innocence is a question of fact, not a question of prejudice or of what the punishment shall be. If, as a matter of fact, from the evidence, the defendant is guilty, no amount of sympathy will make him innocent. If he is innocent, no amount of prejudice will make him guilty. For, regardless of what the penalty may be, regardless of any feeling of sympathy or prejudice, the defendant is upon the evidence and the evidence alone, either guilty or not guilty. What is the true verdict as shown by the evidence is the one question before you.

Instruction No. 9

The jury is further instructed that the doubt which entitles the defendant to an acquittal must be a doubt for which a reason exists. You are not to go beyond the evidence to hunt up doubts,

nor must you entertain such doubts as are merely vague, imaginary, or conjectural. A reasonable doubt is such a doubt as exists in the mind of a reasonable man after he has fully, fairly, and carefully compared and considered all of the evidence or lack of evidence introduced on the trial. If, after a careful consideration and comparison of all the evidence, you can say you have an abiding conviction of the truth of the charge, you are satisfied beyond a reasonable doubt.

13 Instruction No. 10

You are the sole judges of the evidence in this case, of the credibility of the witnesses and of the weight to be accorded to the evidence received.

In considering the credibility of any witness and the weight to be given to his testimony, you should take into consideration his appearance and demeanor upon the stand, his manner of testifying, his apparent candor and frankness or bias, if either be shown, his means of knowledge or observation of the matters concerning which he has testified, the probability or improbability of the story which he relates, and his interest, if any, in the event of this action.

Instruction No. 11

If it has appeared to you that the Court, during the trial or in the giving of these instruction', has commented on the evidence, or indicated in any manner its opinion of the weight or convincing effect of any of the testimony, you shall disregard such comment entirely, for it is the jury and not the Court which must decide the issues of fact in this case.

Instruction No. 12

This being a criminal case, it will require your entire number of twelve to return a verdict. When you have retired to your jury room, you will select one of your number to act as foreman, whose duty it will be to sign whatever verdict you agree upon.

You will take to the jury room the exhibits which have been admitted in evidence, these instructions, and two forms of verdict. One form of verdict, you will use in case you find the defendant Guilty; the other form, you will use in case you find the defendant Not Guilty.

——— ———, *Judge.*

14 In Superior Court of Klickitat County

[Title omitted.]

Defendant's proposed instructions

Filed May 10, 1940

15 Instruction No. 1.

You are instructed to return a verdict in this case finding the defendant Not Guilty.

Instruction No. 2

You are instructed that the Yakima Indian Treaty of June 9, 1855, contains the following provision:

"The exclusive right of taking fish in all the streams, where running thru or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as, also, the right of taking fish at all usual and accustomed places in common with the citizens of the territory, and of erecting temporary buildings for curing them; * * *

and that by this treaty provision there was secured to and vested in the members of said Yakima Tribe of Indians a perpetual right of fishing in their usual and accustomed places off the Yakima Indian Reservation without interference in the exercise of said right by the State of Washington, and that the State of Washington has no right to compel such Indian fishermen to obtain licenses from said state to fish at these usual and accustomed places.

And you are, therefore, further instructed that even though you should find from the evidence, beyond all reasonable doubt, that the defendant, Sampson Tulee, at the time and place alleged in the amended information did catch certain food fish, to wit, Salmon, and did sell the same commercially, without first having obtained a license for the taking thereof as required by section 5703 of Remington's Revised Statutes of Washington, you should, nevertheless, return a verdict of not guilty if you also find from the evidence that the defendant was, at said time, a member of the Yakima tribe of Indians and that the said place mentioned in the amended information was a usual and accustomed fishing place of the said Yakima tribe of Indians, as defined in said Yakima Indian treaty.

16 In Superior Court of Klickitat County

[Title omitted.]

Instructions of court

Filed May 10, 1940

[File endorsement omitted.]

17 Instruction No. 1

Members of the Jury:

This is a criminal action, in which the State of Washington is plaintiff and Sampson Tulee is defendant. The State, by the Prosecuting Attorney, has charged the defendant with the crime of Illegal Taking and Sale of Commercial Food Fish alleged to have been committed as follows:

That on or about the 6th day of May 1939, and within the last year immediately preceding the filing of this Amended Information, at Spearfish on the Columbia River in Klickitat County, Washington, the above-named Sampson Tulee, a member of the Yakima Indian Tribe, then and there being, did then and there catch, at one of the usual and accustomed ancient fishing places of said Yakima Tribe of Indians as defined in the Yakima Indian Treaty of June 9, 1855 (12 Stat. 951), and off the Reservation of said Indians, certain food fish, to wit: salmon, and did then and there sell the same commercially without first having obtained a license for the taking thereof as required by Section 5703, Remington's Revised Statutes of Washington.

Instruction No. 2

To this information the defendant has interposed a plea of not guilty, thus raising every issue in this case and making it necessary for the State to prove to your satisfaction beyond a reasonable doubt every material element of the crime with which the accused stands charged.

Instruction No. 3

You are instructed that the Laws of the State of Washington provide that every person, firm, or corporation using a dip bag net for the taking of salmon in the Columbia River shall pay therefor a license of $5.00 per year.

18 Instruction No. 4

You are instructed that the State of Washington has the right to regulate the taking of fish within its boundaries and in streams

not included in or bordering upon the Yakima Indian Reservation. You are further instructed that this right of regulation includes the right of fixing licenses and providing for penalties in the event of noncompliance with whatever regulations are enacted. You are further instructed that the defendant Sampson Tulee is subject to these regulations so long as he is fishing on streams not included in or bordering upon the Yakima Indian Reservation, and that the fact of his being a member of the Yakima tribe of Indians must not be considered so far as these regulations are concerned.

Instruction No. 5

If it has appeared to you that the Court, during the trial or in the giving of these instructions, has commented on the evidence, or indicated in any manner its opinion of the weight or convincing effect of any of the testimony, you shall disregard such comment entirely, for it is the jury and not the Court which must decide the issues of fact in this case.

Instruction No. 6

The jury is further instructed that the doubt which entitles the defendant to an acquittal must be a doubt for which a reason exists. You are not to go beyond the evidence to hunt up doubts, nor must you entertain such doubts as are merely vague, imaginary, or conjectural. A reasonable doubt is such a doubt as exists in the mind of a reasonable man after he has fully, fairly, and carefully compared and considered all of the evidence or lack of evidence introduced on the trial. If, after a careful consideration and comparison of all the evidence, you can say you have an abiding conviction of the truth of the charge,
19 you are satisfied beyond a reasonable doubt.

Instruction No. 7

You are the sole judges of the evidence in this case, of the credibility of the witnesses and of the weight to be accorded to the evidence received.

In considering the credibility of any witness and the weight to be given to his testimony, you should take into consideration his appearance and demeanor upon the stand, his manner of testifying, his apparent candor and frankness or bias, if either be shown, his means of knowledge or observation of the matters concerning which he has testified, the probability or improbability of the story which he relates, and his interest, if any, in the event of this action.

Instruction No. 8

A person accused of crime is presumed to be innocent. This presumption is not a matter of form merely which the jury may disregard at pleasure, but continues throughout the trial until the same shall have been removed or overcome by proof of guilt beyond a reasonable doubt.

Instruction No. 9.

These instructions are given by the Court as a whole and are so to be considered by the jury. Each and every instruction is to be considered in connection with all of the other instructions given.

Instruction No. 10

If you find that the State has proved to you beyond reasonable doubt all the elements of instruction no. 1, you will find the defendant guilty of illegal taking of food fish; to wit, salmon, on the other hand, if you find that the State has failed to prove all the elements beyond reasonable doubt, you will find the defendant not guilty.

Instruction No. 11

In conclusion let me remind you that each of you have taken a solemn oath that you will well and truly try this case and a true verdict render upon the evidence given on the trial and upon the law as now given you by the Court.

You have nothing whatever to do with the punishment to be inflicted in case of a violation of the law. The fact that punishment may follow a conviction cannot be considered by you, except insofar and only so far as it may tend to make you careful.

Neither must you allow yourself to be moved in the least by sympathy or influenced by prejudice. The question of guilt or innocence is a question of fact, not a question of prejudice or of what the punishment shall be. If, as a matter of fact, from the evidence, the defendant is guilty, no amount of sympathy will make him innocent. If he is innocent, no amount of prejudice will make him guilty. For, regardless of what the penalty may be, regardless of any feeling of sympathy or prejudice, the defendant is upon the evidence and the evidence alone, either guilty or not guilty. What is the true verdict as shown by the evidence is the one question before you.

Instruction No. 12

This being a criminal case, it will require your entire number of twelve to return a verdict. When you have retired to your

jury room, you will select one of your number to act as foreman, whose duty it will be to sign whatever verdict you agree upon.

You will take to the jury room the exhibits which have been admitted in evidence, these instructions, and two forms of verdict. One form of verdict, you will use in case you find the defendant Guilty; the other form, you will use in case you find the defendant Not Guilty.

J. E. STONE, *Judge.*

21 In Superior Court of Klickitat County

[Title omitted.]

Verdict.

Filed May 10, 1940

We, the Jury in the case of State of Washington, Plaintiff vs. Sampson Tulee, Defendant, find the defendant Guilty.

E. O. SHIPP, *Foreman.*

[File endorsement mitted.]

22 In Superior Court of Klickitat County

No. C. 672

THE STATE OF WASHINGTON, PLAINTIFF

vs.

SAMPSON TULEE, DEFENDANT

Judgment and sentence

May 10, 1940

On this 10th day of May 1940, comes Edgar H. Canfield, Prosecuting Attorney for the County and State aforesaid, and the said Defendant in this action is brought to the bar of this Court here, and with him comes his Counsel, Sam M. Driver, U. S. Attorney, Kenneth R. L. Simmons, and Lyle Keith and being asked if he has any legal cause to show why judgment of the Court should not be pronounced against him, says nothing, unless as he before has said; and it appearing to the Court by the verdict of the jury that the Defendant is guilty of the crime of Illegal Taking and Sale of Commercial Food Fish Whereupon, all and singular, the premises being seen and by the Judge of the Court here fully understood, it is ordered, adjudged, and

decreed by said Court that the said Defendant is guilty of the crime of Illegal taking and Sale of Commercial Food Fish as charged, and that he be punished therefor by a fine in the sum of $25.00 and costs of this action.

Signed in the presence of the defendant in open Court this 10th day of May 1940.

J. E. STONE,
Judge of the Superior Court Aforesaid.

[File endorsement omitted.]

23 In Superior Court of Klickitat County

[Title omitted.]

Motion for new trial

Filed May 10, 1940

Comes now the defendant Sampson Tulee and moves the court for a new trial in the above entitled action for the following causes:

1. Insufficiency of the evidence to justify the verdict and that said verdict is against law.
2. Error in law occuring at the trial and excepted to at the time by the defendant.

SAM M. DRIVER,
KENNETH R. L. SIMMONS,
LYLE KEITH,
Attorneys for the Defendant.

Service acknowledged and copy received this 10th day of May 1940.

EDGAR H. CANFIELD,
Pros. Atty.

[File endorsement omitted.]

24 In Superior Court of Klickitat County

[Title omitted.]

Order denying motion for new trial

Filed May 10, 1940.

This matter coming on regularly for hearing on motion of the defendant, Sampson Tulee, for a new trial, and the court having duly considered the same, and being fully advised in the premises, it is now therefore

Ordered that the motion for new trial of the defendant, Sampson Tulee, be and the same is hereby denied on each and every ground therein stated and set forth.

Defendants excepts and his exception is hereby allowed.

J. E. STONE, *Judge.*

Presented by:

SAM M. DRIVER,
Attorney for Defendant.

Approved as to form

EDGAR H. CANFIELD,
Attorney for Plaintiff.

[File endorsement omitted.]

25 In Superior Court of Kliekitat County

[Title omitted.]

Notice of appeal

Filed May 10, 1940

To the STATE OF WASHINGTON, PLAINTIFF, AND TO EDGAR H. CANFIELD, and TED H. LITTLE, ITS ATTORNEYS:

Notice is hereby given by the defendant, Sampson Tulee, that he appeals to the Supreme Court of the State of Washington from the verdict of guilty, the judgment of conviction, and the sentence imposed thereunder, and from all adverse rulings rendered by the above-entitled court during the trial of said cause, and from the order of said court denying the motion of the defendant, Sampson Tulee, for arrest of judgment and from the order of said court denying said defendant's motion for new trial, rendered in the Superior Court of the State of Washington, in and for Klickitat County, in the above-entitled proceedings, on May 10th, 1940.

Dated this 10th day of May 1940.

SAM M. DRIVER,
KENNETH R. L. SIMMONS,
LYLE KEITH,
Attorneys for the Defendant.

Service acknowledged and copy received this 10th day of May 1940.

EDGAR H. CANFIELD,
Attorney for Plaintiff.

[File endorsement omitted.]

26 [Clerk's certificate to foregoing transcript omitted in printing.]

29 In Supreme Court of Washington

No. 28079 En Banc

STATE OF WASHINGTON, RESPONDENT

v.

SAMPSON TULEE, APPELLANT

Filed Jan. 13, 1941

Opinion

Defendant herein, Sampson Tulee, a member of the Yakima tribe of Indians, was charged by information filed in the superior court for Klickitat county, Washington, with the offense of having, May 6, 1939, caught salmon and food fish with a dip bag net, and with selling commercially the fish which he had caught, all without first having obtained a license to fish, as required by Rem. Rev. Stat. (Sup.), § 5703. Tulee claiming that under the treaty of June 9, 1855 (12 U. S. Stat. 951), he, as a member of the Yakima tribe of Indians, had the right to catch fish as he did, the United States, on behalf of its ward, Sampson Tulee, the defendant, petitioned the United States district court for the eastern district of Washington for a writ of habeas corpus. After due proceedings had, the United States district court held that the right secured to the Yakima tribe of Indians by the treaty referred to was subject to the paramount and superior right of the state, in the exercise of its sovereign police powers, to reasonably regulate the taking of salmon from the waters within its jurisdiction, and denied the petition for the writ. On appeal to the United States circuit court, that court held that while it had jurisdiction of the case, it was not a proper cause for the exercise of such jurisdiction, and, following the rule laid down in the case of United States ex rel. Kennedy v. Tyler, 269 U. S. 13, held that the cause should be tried in the state courts, subject to review of any judgment of this court before the
30 supreme court of the United States.

The cause then proceeded before the superior court for Klickitat county on an amended information charging defendant with having caught, at one of the usual and accustomed ancient fishing places of the Yakima tribe of Indians, as defined in the treaty above referred to, certain food fish and salmon, and selling the same commercially without having obtained a license for the taking thereof, as required by the state law. On arraignment defendant entered a plea of not guilty, and demurred to the information on the grounds that the facts charged do not constitute a

crime, and that the information contained matter which, if true, constitutes a legal bar to the action. The demurrer was overruled by the trial court, and the action proceeded to trial before the court and jury. Defendant objected to the introduction of any testimony, and moved for a directed verdict of not guilty, his objection and motion having been overruled. The jury returned a verdict of guilty, whereupon defendant moved in arrest of judgment and for a new trial. These motions having been denied, judgment was entered upon the verdict, and sentence imposed. Defendant was admitted to bail, and appeals to this court from the judgment of guilty and sentence imposed thereon.

Error is assigned upon the overruling of appellant's demurrer to the amended information; upon the overruling of his objections to the introduction of any evidence; upon the denial of his motion for a directed verdict; and upon the denial of his motions in arrest of judgment or for a new trial. Appellant also assigns error upon certain instructions given by the court, and upon the refusal of the trial court to give two instructions which appellant requested.

The only question raised upon this appeal is whether appellant, as a member of the Yakima tribe of Indians, was, under the treaty between the United States and the Yakima tribe, entitled to catch fish in the Columbia river, without the territorial limits of the Yakima Indian reservation, without regard to the statutes of the state of Washington covering the taking of food fish from the lakes and rivers within this State.

During the latter part of May and the first part of June 1855, the United States, represented by Governor Isaac I. Stevens, who was governor of the then territory of Washington, and also the agent of the United States for dealing with the Indian tribes inhabiting the territory, held a council with the Yakima Indians and other tribes, at Walla Walla valley, Washington Territory. As the result of this council, the treaty of June 9, 1855, between the United States and the Yakima tribe, was signed. By this treaty the territorial limits of the reservation assigned to the Yakimas were fixed. The portion of the treaty pertinent to the facts in the case at bar is the second paragraph of article III, which reads as follows:

"The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing them * * *"

We are not here concerned with the right of the Indians to take fish from the streams running through or bordering upon the

reservation. We are concerned only with the latter portion of the paragraph of the treaty quoted, which secured to the Indians the right to fish "at all usual and accustomed places, in common with citizens of the Territory."

All treaties with Indian tribes are construed by the courts in favor of the Indians, in an endeavor to exercise toward them the highest degree of good faith, because of the dominant position of the United States government. United States v. Kagama, 118 U. S. 375; Choctaw Nation v. United States, 119 U. S. 1; Jones v. Meehan, 175 U. S. 1; United States v. Winans, 198 U. S. 371.

At the time of the making of the treaty, the then territory of Washington was largely wild land, sparsely inhabited.
32 The Yakimas were a powerful tribe, and the making of the treaty with them was an important step in the process of establishing orderly government and providing for the settlement of the territory. Fishing was an important part of the life of the Indians, and the right secured to the tribe to catch fish not only on the reservation but at other accustomed fishing places off the reservation, was then to them a valuable right.

In connection with this treaty, appellant earnestly invites our attention to a certified copy of the minutes of the proceedings of the council above referred to, held between representatives of the United States and various bands of Indians, including the Yakima tribe, which resulted in the treaty of June 9, 1855. Governor Isaac I. Stevens, the senior representative of the United States present, as shown by the minutes of the council, repeatedly assured the Indians that they would not be wronged, that their treaty rights would be protected, and that the provisions of the treaty would be faithfully carried out. The minutes show that on June 5th, Governor Stevens assured the Indians that they would be allowed to go to the usual fishing places and fish in common with the whites.

In the early case of Johnson v. McIntosh, 21 U. S. 543, the court recognized the rights of the Indians, saying: "All our institutions recognize the absolute title of the crown, subject only to the Indian right of occupancy."

This court, in the case of Pioneer Packing Co. v. Winslow, 159 Wash. 655, 294 Pac. 557, held that the state had no jurisdiction over the Indians, in so far as their right to fish in streams flowing through or bordering upon the Yakima reservation was secured to them by the treaty above referred to.

In interpreting Indian treaties, the rule has been followed that rights not expressly granted by the Indians are reserved to them. Winters v. United States, 207 U. S. 564.

33 On several different occasions this court has considered the question here presented. While admitting the force

of our previous decisions, appellant asks that this question be reexamined, particularly in the light of the record of the council between Governor Stevens and the Indians above referred to, the existence of which record was not known at the time the prior cases were decided.

In the case of State v. Towessnute, 89 Wash. 478, 154 Pac. 805, it appeared that the defendant was charged with violation of the state game laws governing the taking of food fish. The defendant, a member of the Yakima tribe, had caught salmon at a point on the Yakima river several miles outside of the Yakima reservation. The defendant had not procured a fishing license, and had snagged the salmon with a gaff hook, thereby admittedly violating the state game law and rendering himself subject to prosecution, unless the clause of the treaty hereinabove quoted gave him the right to fish at the point on the Yakima river where he had taken the salmon, free from the limitations provided by the statutes of this state. The trial court sustained the defendant's demurrer to the information and dismissed the proceeding. On appeal this court reversed the trial court, holding that the information was good, and that the demurrer thereto was erroneously sustained.

In the case of State v. Alexis, 89 Wash. 492, 154 Pac. 810, 155 Pac. 1041, the right of a member of the Lummi tribe of Indians under the treaty entered into in 1859 between the United States and the Lummi tribe, to fish outside of the Lummi reservation, was considered. The treaty with the Lummis contained a provision similar to that contained in the treaty with the Yakimas. In the superior court the defendant was convicted of violating the state statutes regulating the taking of fish, and on appeal the conviction was affirmed, this court, in a short
34 per curiam opinion, stating that the same question was presented as that which the court had just decided in the Towessnute case, *supra*. On petition for rehearing, this court, in a supplemental per curiam opinion, referred to certain testimony introduced before the trial court, which it was contended showed some contemporaneous interpretation of the treaty in favor of the rights of the Indians to fish, and also showed some statements on the part of Governor Stevens referring to the rights of the Indians under the treaty. The court approved the original opinion in the case.

In State v. Meninock, 115 Wash. 528, 197 Pac. 641, it appeared that four members of the Yakima tribe had been charged with fishing in the Yakima river, in violation of the state fisheries code. The place where the defendants had taken fish was outside the Yakima reservation, but fell within the provision of the treaty with the Yakimas with which we are here concerned.

The four cases were consolidated on appeal, and by a decision of this court sitting en banc, the judgments appealed from, by which the defendants were found guilty before the superior court, were affirmed.

In the case of State v. Wallahee, 143 Wash, 117, 255 Pac. 94, the defendant, a member of the Yakima tribe, was charged with having in his possession, on a date specified, a dead female deer. It was admitted that the defendant killed the deer outside the boundaries of the Yakima reservation, while hunting upon open and unclaimed lands belonging to the United States. The treaty with the Yakimas reserved to the Indians the right to take game on any open and unclaimed government lands. The defendant was convicted before the superior court of violation of the game law, and on appeal the judgment was affirmed.

On behalf of the state of Washington, respondent herein, it is argued that Rem. Rev. Stat. (Sup.), § 5703, providing for the issuance of licenses authorizing the licensee to fish within the waters of this state, is a lawful exercise of the police
35 power of the state in regulating fishing within its borders. Respondent relies upon the proposition that the powers of the Federal government are limited to those granted to it either expressly or by implication in the constitution of the United States, all other powers being reserved to the states. This matter was discussed by the supreme court of the United States in the case of Prigg v. Pennsylvania, 41 U. S. 539, in which the court used the following language:

"To guard, however, against any possible misconstruction of our views, it is proper to state that we are by no means to be understood, in any manner whatsoever, to doubt or to interfere with the police power belonging to the states, in virtue of their general sovereignty. That police power extends over all subjects within territorial limits of the states, and has never been conceded to the United States."

In the case of Atlantic Coast Line R. Co. v. Goldsboro, 232 U. S. 548, is found the following:

"For it is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grants; and that all contract and property rights are held subject to its fair exercise."

Upon admission to the union, a state assumes all the rights and powers the exercise of which is enjoyed by her sister commonwealths, each state, regardless of the date of its admission to the

union, standing on a basis of equality with the other states. Coyle v. Smith, 221 U. S. 559.

In the case of Ward v. Race Horse, 163 U. S. 504 (cited in the case of State v. Towessnute, supra), the supreme court had before it for consideration a question very similar to that here presented. The case is of great interest, for the reason that it lays down principles applicable to several phases of the case at bar. It appeared that by the treaty of 1869 between the United States and the Bannock Indians, it was agreed that the Indians

"* * * shall have the right to hunt upon the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts."

36 Prior to the making of this treaty, Congress had established the territory of Wyoming, the act creating a territory providing that nothing therein contained should impair the treaty rights of the Indians as they then existed. In 1890, Wyoming was admitted to the union, and in 1895 the state legislature enacted a statute regulating the killing of wild game. Thereafter the defendant in the case, one Race Horse, a Bannock Indian, was charged with killing elk upon unoccupied land of the United States, in violation of the state statute. The defendant relied upon the treaty above referred to. The case went before the supreme court of the United States by way of a writ of habeas corpus. In the course of the opinion, in which it was held that the defendant could not avail himself of the provisions of the treaty between the United States and his tribe, the court stated:

"The act which admitted Wyoming into the Union, as we have said, expressly declared that that State should have all the powers of the other States of the Union, and made no reservation whatever in favor of the Indians. These provisions alone considered would be in conflict with the treaty if it was so construed as to allow the Indians to seek out every unoccupied piece of government land and thereon disregard and violate the state law, passed in the undoubted exercise of its municipal authority. But the language of the act admitting Wyoming into the Union, which recognized her coequal rights, was merely declaratory of the general rule * * *

"The power of all the States to regulate the killing of game within their borders will not be gainsaid, yet, if the treaty applies to the unoccupied land of the United States in the State of Wyoming, that State would be bereft of such power, since every isolated piece of land belonging to the United States as a private owner, so long as it continued to be unoccupied land, would be exempt in this regard from the authority of the State. Wyoming, then, will have been admitted into the Union, not as an equal member,

but as one shorn of a legislative power vested in all the other States of the Union, a power resulting from the fact of statehood and incident to its plenary existence. Nor need we stop to consider the argument advanced at bar, that as the United States, under the authority delegated to it by the Constitution in relation to Indian tribes, has a right to deal with that subject, therefore it has the power to exempt from the operation of state game laws each particular piece of land, owned by it in private ownership within a State, for nothing in this case shows that this power has been exerted by Congress. The enabling act declares that the State of Wyoming is admitted on equal terms with the other States, and this declaration, which is simply an expression of the general rule, which presupposes that States, when admitted into the Union, are endowed with powers and attributes equal in scope to those enjoyed by the States already admitted, repels any presumption that in this particular case Congress intended to admit the State of Wyoming with diminished governmental au-
37 thority. The silence of the act admitting Wyoming into the Union, as to the reservation of rights in favor of the Indians, is given increased significance by the fact that Congress in creating the Territory expressly reserved such rights. Nor would this case be affected by conceding that Congress, during the existence of the Territory, had full authority in the exercise of its treaty making power to charge the Territory, or the land therein, with such contractual burdens as were deemed best, and that when they were imposed on a Territory it would be also within the power of Congress to continue them in the State, on its admission into the Union. Here the enabling act not only contains no expression of the intention of Congress to continue the burdens in question in the State, but, on the contrary, its intention not to do so is conveyed by the express terms of the act of admission."

The Race Horse case is strikingly like that here presented. The act of Congress of March 2, 1853 (10 U. S. Stat. 172), providing for the organization of the territory of Washington, contains a provision with respect to treaties with Indian tribes, similar to that contained in the act which organized the territory of Wyoming. In the Race Horse case, the Indian relied upon a provision of the treaty securing to the Indians the right to hunt upon the unoccupied lands of the United States, so long as peace subsisted. In the case at bar, the treaty with the Yakimas secured to them the right to hunt upon open and unclaimed lands belonging to the United States (State v. Wallahee, *supra*), in addition to the right to fish at their accustomed fishing places without the reservation. The organic act creating each territory preserved treaty rights enjoyed by the Indians. The enabling acts by which

Washington and Wyoming were admitted to the union, while differing somewhat in wording, are essentially the same.

It has several times been held that the treaty with the Yakimas established in favor of the Indians a perpetual servitude on the lands necessary for their use in taking fish at their accustomed fishing places without the boundaries of the reservation, and that lands conveyed by the United States or by the state are subject to this easement. United States v. Winans, 198 U. S. 371; Seufert Bros. Co. v. United States, 249 U. S. 194; United States v. Taylor, 3 W. T. 88, 13 Pac. 333. There is, then, no dissent to the proposition that under the treaty the Indians are entitled
38 to an easement on, over and across such lands as they must use in enjoying the full benefit of their fishing rights.

In connection with the question to be here determined, the case of People ex rel. Kennedy v. Becker, 241 U. S. 556, is of interest. Three members of the Seneca tribe of Indians were arrested by the authorities of the state of New York, charged with having in their possession certain fish in violation of the state conser a-tion law. The defendants contended that as members of the Seneca tribe they were entitled to catch fish as they did, under a treaty made in the year 1797 between the Seneca nation and Robert Morris, which treaty or convention had been made under authority of the United States, and had been ratified by the senate and proclaimed by the president. By the treaty the Indians reserved to themselves and their heirs the privilege of fishing and hunting on the land conveyed. Discussing this right, the court said:

"The right thus reserved was not an exclusive right. Those to whom the lands were ceded, and their grantees, and all persons to whom the privilege might be given, would be entitled to hunt and fish upon these lands, as well as the Indians of this tribe. And, with respect to this nonexclusive right of the latter, it is important to observe the exact nature of the controversy. It is not disputed that these Indians reserved the stated privilege both as against their grantees and all who might become owners of the ceded lands. We assume that they retained an easement, or profit á prendre, to the extent defined; that is not questioned. The right asserted in this case is against the State of New York. It is a right sought to be maintained in derogation of the sovereignty of the State. It is not a claim for the vindication of a right of private property against any injurious discreimination, for the regulations of the State apply to all persons equally. It is the denial with respect to these Indians, and the exercise of the privilege reserved, of all state power of control or reasonable regulation as to lands and waters otherwise admittedly within the jurisdiction of the State.

"It is not to be doubted that the power to preserve fish and game within its borders is inherent in the sovereignty of the State (Geer v. Connecticut, 161 U. S. 519; Ward v. Racehorse, 163 U. S. 504, 507), subject of course to any valid exercise of authority under the provisions of the Federal Constitution. It is not denied—save as to the members of this tribe—that this inherent power extended over the locus in quo and to all persons attempting there to hunt or fish, whether they are owners of the lands or others. The contention for the plaintiffs in error must, and does, go to the extent of insisting that the effect of the reservation was to maintain in the tribe sovereignty quoad hoc. As the plaintiffs in error put it: 'The land itself became
39 thereby subject to a joint property ownership and the dual sovereignty of the two peoples, white and red, to fit the case intended, however infrequent such situation was to be.' We are unable to take this view. It is said that the State would regulate the whites and that the Indian tribe would regulate its members, but if neither could exercise authority with respect to the other at the locus in quo, either would be free to destroy the subject of the power. Such a duality of sovereignty instead of maintaining in each the essential power of preservation would in fact deny it to both.

"It has frequently been said that treaties with the Indians should be construed in the sense in which the Indians understood them. But it is idle to suppose that there was any actual anticipation at the time the treaty was made of the conditions now existing to which the legislation in question was addressed. Adopted when game was plentiful—when the cultivation contemplated by the whites was not expected to interfere with its abundance—it can hardly be supposed that the thought of the Indians was concerned with the necessary exercise of inherent power under modern conditions for the preservation of wild life. But the existence of the sovereignty of the State was well understood, and this conception involved all that was necessarily implied in that sovereignty, whether fully appreciated or not. We do not think that it is a proper construction of the reservation in the conveyance to regard it as an attempt either to reserve sovereign prerogative or so to divide the inherent power of preservation as to make its competent exercise impossible. Rather are we of the opinion that the clause is fully satisfied by considering it a reservation of a privilege of fishing and hunting upon the granted lands in common with the grantees, and others to whom the privilege might be extended, but subject nevertheless to that necessary power of appropriate regulation, as to all those privileged, which inhered in the sovereignty of the State over the lands where the privilege was exercised. This was clearly recognized in United

States v. Winans, 198 U. S. 371, 384, where the court in sustaining the fishing rights of the Indians on the Columbia River, under the provisions of the treaty between the United States and the Yakima Indians, ratified in 1859, said (referring to the authority of the State of Washington): 'Nor does it' (that is, the right of 'taking fish at all usual and accustomed places') 'restrain the State unreasonably, if at all, in the regulation of the right.' It only fixes in the land such easements as enable the right to be exercised."

The court cited the Race Horse case, and upheld the authority of the state of New York, as sought to be exercised pursuant to its conservation law.

In The Cherokee Tobacco case, 78 U. S. 616, it was held that under the Federal internal revenue laws, a tax could be imposed upon tobacco grown by members of the Cherokee nation upon lands within the Cherokee reservation, notwithstanding a provision of the treaty between the United States and the Cherokee nation exempting the members of the tribe from the payment of any tax on farm products, "which is now or may be levied by the United States on the quantity sold outside of the Indian territory." Referring to the conflict between the internal revenue laws and the Indian treaty, the court said: "Undoubtedly one or the other must yield. The repugnancy is clear and they cannot stand together." In the course of its opinion, the court said:

"It need hardly be said that a treaty cannot change the Constitution or be held valid if it be in violation of that instrument. This results from the nature and fundamental principles of our government. The effect of treaties and acts of Congress, when in conflict, is not settled by the Constitution. But the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty. In the cases referred to these principles were applied to treaties with foreign nations. Treaties with Indian nations within the jurisdiction of the United States, whatever considerations of humanity and good faith may be involved and require their faithful observance, cannot be more obligatory. They have no higher sanctity; and no greater inviolability or immunity from legislative invasion can be claimed for them. The consequences in all such cases give rise to questions which must be met by the political department of the government. They are beyond the sphere of judicial cognizance. In the case under consideration the act of Congress must prevail as if the treaty were not an element to be considered. If a wrong has been done the power of redress is with Congress, not with

the judiciary, and that body, upon being applied to, it is to be presumed, will promptly give the proper relief."

It was held that the treaty provisions must yield to the Federal laws providing for the collection of taxes.

In the case of Bayside Fish Flour Co. v. Gentry, 297 U. S. 422, the supreme court upheld the right of the state of California to proceed under its fish and game code, even though the enforcement of the act indirectly acted as a deterrent to the right to purchase fish taken on the high seas, and might incidentally affect interstate or foreign commerce.

In the case of Patsone v. Commonwealth of Pennsylvania, 232 U. S. 138, the supreme court upheld a statute of the state prohibiting the killing of wild game by aliens, and held that a citizen of Italy, who claimed exemption from the act by reason of a treaty between the United States and the kingdom of Italy, by which the citizens of the two nations were assured the enjoyment of certain rights and privileges, was subject to prosecution under the state law, notwithstanding the provisions of the treaty. It was held that no provision of the treaty operated to deprive
41 the states of the exercise of their powers to the full extent.

In the case of Geer v. Connecticut, 161 U. S. 519, the supreme court considered the rights of the states to control the export of wild game, saying.

"Aside from the authority of the State, derived from the common ownership of game and the trust for the benefit of its people which the State exercises in relation thereto, there is another view of the power of the State in regard to the property in game, which is equally conclusive. The right to preserve game flows from the undoubted existence in the State of a police power to that end, which may be none the less efficiently called into play, because by doing so interstate commerce may be remotely and indirectly affected."

In the case of State v. Morrin, 136 Wis. 552, 117 N. W. 1006, the supreme court of Wisconsin affirmed a finding of guilty entered against a Chippewa Indian who had trapped fish with gill nets, contrary to the state game law. The defendant relied upon a treaty between the United States and the Chippewa Indians, securing to the latter the "right to hunt and fish therein until otherwise ordered by the President." It was held that, pursuant to the Race Horse case and other authorities cited, the treaty did not operate to confer upon the defendant the right to fish in violation of the state game law. The court also observed that the defendant had acquired United States citizenship and was not living on the reservation, and for that reason was not entitled to claim the benefit of any treaty rights. The decision was based upon both grounds.

In the case of People v. Chosa, 252 Mich. 154, 233 N. W. 205, the supreme court of Michigan upheld the right of a state to enforce its game laws against Indians who attempted to hunt and fish on lands which their tribe had ceded to the United States, the Indians claiming such rights under a treaty with the Federal government. It was stipulated that the defendants were entitled to enjoy "all the treaty rights and privileges" of the treaty. It was held that the defendants were "subject to the game laws of the state, on the lands covered by the treaties, to the same extent as the general public." The court also considered the question of the Indians' citizenship.

42 Under the authorities, it is clear that the state of Washington enjoys to the full the exercises of its police power, as an equal of the other states making up our Federal Union, including the original thirteen. Under the treaty, the members of the Yakima tribe are entitled to an easement to cross and use lands necessary to the enjoyment of their fishing rights at their old accustomed fishing places. Lands granted by the United States or the state remain subject to this servitude.

The minutes of the council between Governor Stevens and the Indians, at which council the treaty was made and executed, constitute a most interesting historical record, and show, as argued by appellant, that Governor Stevens, doubtless in the exercise of the utmost good faith, assured the Indians that the Federal government would faithfully carry out all terms and conditions of the treaty. To this day, the vast domain set apart to the tribe, comprising many acres of rich land, is enjoyed by the members of the Yakima tribe. Under the authorities, however, it must be held that as to the right of the Indians to fish at points without the reservation, which right was secured to them by the treaty "in common with citizens of the territory," such right has been limited by the statutes of the state of Washington governing the taking of fish and wild game, and that the decisions of this court hereinabove referred to correctly declared the law, and should be followed in the case at bar.

As observed by the supreme court of the United States in The Cherokee Tobacco case, supra, consideration of such a situation as this, if a wrong has been done, pertains to the legislative department of the government, the correction of the wrong, if one exists, being "beyond the sphere of judicial cognizance."

43 The judgment appealed from is accordingly affirmed.

BEALS, J.

We concur:

MAIN, J.

STEINERT, J.

ROBINSON, C. J.

JEFFERS, J.

44 In Supreme Court of Washington

Dissenting opinion

Filed Jan. 13, 1941

SIMPSON, J., Dissenting: I am unable to agree with the conclusion reached by the majority.

The pertinent provisions of the treaty are contained in subparagraph 2 of Article 3, which reads as follows:

"The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is futher secured to said confederated Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory, and of erecting temporary buildings for curing them; * * *"

All Indian Treaties are construed liberally by our courts in good faith and in favor of the Indians, because of the dominant position of the United States. Worcester v. Georgia, 31 U. S. 515; United States v. Kagama, 118 U. S. 375; Choctaw Nation v. United States, 119 U. S. 1; Jones v. Meehan, 175 U. S. 1; United States v. Winans, 198 U. S. 371.

In the Worcester case, supra, the Supreme Court of the United States said:

"The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of, which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend, that the word 'allotted,' in reference to the land guaranteed to the Indians, in certain treaties, indicates a favor conferred, rather than a right acknowledged, would, it would seem to me, do injustice to the understanding of the parties. *How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.*

"The question may be asked, is no distinction to be made between a civilized and savage people? Are our Indians to be placed upon a footing with the nations of Europe, with whom we have made treaties? The inquiry is not, what station shall now be given to the Indian tribes in our country? but what relation have they sustained to us, since the commencement of our government? We have made treaties with them; and are those treaties to be disregarded on our part, because they were entered into with an uncivilized people? Does this lessen the obligation of such treaties? By entering into them, have we not admitted

the power of this people to bind themselves, and to impose obligations on us?" [Italics mine.]

In the Jones case, supra, that court again announced the rule of construction in the following language:

45 "In construing any treaty between the United States and an Indian tribe, it must always (as was pointed out by the counsel for the appellees) be borne in mind that the negotiations for the treaty are conducted, on the part of the United States, an enlightened and powerful nation, by representatives skilled in diplomacy, masters of a written language, understanding the modes and forms of creating the various technical estates known to their law, and assisted by an interpreter employed by themselves; that the treaty is drawn up by them and in their own language; that the Indians, on the other hand, are a weak and dependent people, who have no written language and are wholly unfamiliar with all the forms of legal expression, and whose only knowledge of the terms in which the treaty is framed is that imparted to them by the interpreter employed by the United States; and *that the treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians.*" [Italics mine.]

Rights not expressly granted in treaties with the Indians are reserved by them. Winters v. United States, 207 U. S. 564.

Having this rule in mind, let us view the situation surrounding the making of the treaty of 1885 entered into between the Federal Government and various Indian Tribes of the northwest, including the Yakimas, of which appellant is a member.

The meeting at which the treaty was arranged was held at the Council Grounds in Walla Walla Valley. It started May 18, 1855, and ended June 11, 1855. Governor Isaac I. Stevens of the Territory of Washington and General Joel Palmer of the Territory of Oregon represented the United States Government, and chiefs of the various tribes represented the Indians. Many speeches were made by those present, chiefly by Governor Stevens and General Palmer.

As a result of the treaty, 16,920 square miles of territory were ceded to the United States by the Indians and 1,233 square miles of land were retained by the Indians in two reservations.

Among other things, Governor Stevens told the Indians,

"We have near to our hearts the property of the Indians and the propositions to be made to you will prove it."

Speaking of the tracts to be retained by the Indians, he said:

"On each tract we wish to have one or more schools; we want on each tract one or more blacksmiths; one or more car-

46 penters; one or more farmers; we want you and your children to learn to make ploughs, to learn to make waggons, and everything which you need in your house. We want your women and your daughters to spin, and to weave and to make clothes. We want to do this for a certain number of years.

"Then you the men will be farmers and mechanics, or you will be doctors and lawyers like white men; your women and your daughters will then teach their children, those who come after them to spin, to weave, to knit, to sew, and all the work of the house and lodges, you will have your own teachers, your own farmers, blacksmiths, wheelwrights, and mechanics: besides this we want on each tract a saw mill and a grist mill."

At another time he made the following statement concerning the care which the Government would exercise in order to help the Indians:

"I have spoken of an agent, I will speak more. If we agree at the council we have many things to do for you; the agent will live with you and see that it is done; if you think we have not done our part go to the agent and tell him so, and he will see that we do *do* it. If we think you have not done your part the agent will go to the chiefs and say so frankly and arrange it with them; he will be your elder brother, and will see that you are not wronged, and that the bargain is carried out."

Again, he stated:

"If we make a Treaty with you and our Great Chief and his Council approves it, you can rely on all its provisions being carried out strictly. My heart is that it is wise for you to do so. I will not speak any longer."

Governor Stevens made a definite statement relative to the Indian's right to fish in the following words:

"There is plenty of salmon on these reservations, there are roots and berries. There is also some game. You will be near the Great Road and you can take your horses and your cattle down the river and to the Sound to market. * * *.

"You will be allowed to go to the usual places and fish in common with the whites * * * together with all outside the reservation."

"In the paper for the Yakimas we have included the tribes who acknowledge Kam-i-ah-kan for their head chief. The Piscouse, the Swan-wap-um and Palouse, the Yakamas and all the bands on the Columbia below the Walla Walla down to the White Salmon River. They have their reservation and fishing stations, which they well know and which I understand is satisfactory.

* * * * *

"You will not be called according to the paper to move on the reservation for two or three years; then is secured to you your right to fish, to get roots and berries, and to kill game; then your payments are secured to you as agreed; then your schools, your shops, and physicians and other things we have promised are secured; then the salaries, the houses, and the 10-acre farms of your chiefs are secured to him.

* * * * *

"I will ask of Looking Glass whether he has been told
47 of our Council. Looking Glass knows that in this reservation settlers cannot go, that he can graze his cattle outside of the reservation on lands not claimed by settlers, *that he can catch fish at any of the fishing stations.* * * * [Italics supplied.]

All of these statements were made in good faith by Governor Stevens at a time when the northwest was very much of a wilderness. They were made at a time when Indians and white men alike hunted and fished as they desired without let or hindrance from the federal or territorial governments. Regulations of fish and game were neither known nor dreamed of. The Indians had from time immemorial fished for salmon on the banks of the Columbia river. The catching of salmon was necessary for the sustenance of themselves and their families. Neither Governor Stevens nor the Indian Chiefs could possibly have visualized present day conditions and present day restrictions. They entered into the treaty agreement under situations which existed at that time. We should interpret and construe the treaty and the rights of appellant in the light of the surroundings present at that time.

Without any doubt whatever, Governor Stevens and the Indians signed the treaty with the definite understanding that the Indians should be forever allowed to catch salmon from the Columbia river without any restrictions whatsoever. We should so construe the treaty.

It may be conceded that there is an ambiguity contained in the treaty. However, that ambiguity, if there is one, should be resolved in favor of the Indians. Winters v. United States, 207 U. S. 564.

The state is not in a position, nor does it have the power, to modify or abrogate a treaty made by authority of the Congress of the United States.

Article I. § 8, of the Federal Constitution, gives to the Congress power

"To regulate commerce with foreign nations and among the several states and with the Indian tribes."

48 The Enabling Act, 1 Rem. Rev. Stat., 333, § 4, Second, recognized the position of the state in disclaiming all title to all lands.

"* * * owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States."

There is a definite procedure insisted upon by the courts when the United States seeks to assert its position of dominance by abrogating or changing an Indian treaty, and that is by the passage of a clear and express Act of Congress which is of such a nature that the treaty and the act cannot in any reasonable view stand together. Cope v. Cope, 137 U. S. 682; Fong Yue Ting v. United States, 149 U. S. 698.

I realize that the majority opinion is founded upon the following decisions of this court: State v. Towessnute, 89 Wash. 478, 154 Pac. 805; State v. Alexis, 89 Wash. 492, 154 Pac. 810, 155 Pac. 1041; State v. Meninock, 115 Wash. 528, 197 Pac. 641; and State v. Wallahee, 143 Wash. 117, 255 Pac. 94.

The last three cases cited are based upon the holding in the Towessnute case, supra. To my mind, that case is entirely wrong in principle, and is founded upon an unjust assumption. It states that the Indians are mere occupants of the soil of America. Not so, they owned it as much or more than we do. Our ancestors took the lands from the Indians by conquest because they had firearms and were better able to destroy than the Indians.

Again, the opinion states, in speaking of the words "in common with citizen":

"These words were not used to give something to the white man, but to give something to the red man; not to give the Indian an advantage, but to save him from disadvantage."

Where did the white man get the land to give? The answer is that all of his rights were derived from the Indians.
49 United States v. Winans, 198 U. S. 371.

The Indians surrendered their land to the white man in consideration of glowing promises of care and protection. When he gave his land away the red man reserved certain rights, among which was the right to fish at accustomed places, a right he had exercised for many, many generations.

It must be said, however, that at the time our former cases were decided, the court did not have the benefit of a report of the proceedings which led to the signing of the treaty under consideration.

The proper disposition of the question and interpretation of the treaty in question was made by the United States Supreme Court in United States v. Winans, supra.

That court held that the Yakima Indians had a right in the real property and an easement for certain express purposes in and to their usual and accustomed fishing places on the Columbia river. The court stated:

"The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not much less necessary to the existence of the Indians than the atmosphere they breathed. New conditions came into existence, to which those rights had to be accommodated. Only a limitation of them, however, was necessary and intended, not a taking away. *In other words, the treaty was not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted.* And the form of the instrument and its language was adapted to that purpose. Reservations were not of particular parcels of land, and could not be expressed in deeds as dealings between private individuals. The reservations were in large areas of territory and the negotiations were with the tribe. They reserved rights, however, to every individual Indian, as though named therein. They imposed a servitude upon every piece of land as though described therein. There was an exclusive right of fishing reserved within certain boundaries. There was a right outside of those boundaries reserved 'in common with citizens of the territory.' As a mere right, it was not exclusive in the Indians. Citizens might share it, but the Indians were secured in its enjoyment by a special provision of means for its exercise. They were given 'the right of taking fish at all usual and accustomed places,' and the right 'of erecting temporary buildings for curing them.' The contingency of the future ownership of the lands, therefore, was foreseen and provided for—in other words, the Indians were given a right in the land—the right of crossing it to the river—the right to occupy it to the extent and for the purpose mentioned. No other conclusion would give effect to the treaty. *And the right was intended to be continuing against the United States and its grantees as well as against the State and its grantees.*" [Italics supplied.]

Cf., United States v. Powers, 16 F. Supp. 155; United States v. Stotts, 49 F. (2d) 619; United States v. McGowan, 62 F. (2d) 955.

The cases of State v. Towessnute, State v. Alexis, State v. Meninock, and State v. Wallahee, supra, should be reexamined and overruled.

If Governor Stevens was not sincere and the government secured from the Indians the large domain ceded to it by the making of promises it did not intend to keep, and did not keep, then fraud was practiced on the Indians, and the wrong done to them should be rectified.

On the other hand, if the promises made by Governor Stevens were made in good faith, as I am sure they were, then all of the facts relative to the making of the treaty should be considered in arriving at the intent of the parties.

The treaty should be upheld as construed in the Winans case, supra, and the judgment of the trial court reversed.

SIMPSON, *J.*

We concur:

MILLARD, *J.*

BLAKE, *J.*

[File endorsement omitted.]

51 } In Supreme Court of Washington

[Title omitted.]

Motion to stay remittitur

Filed Feb. 10, 1941

Comes now Sampson Tulee, the above named defendant and appellant, by and through his attorney Lyle Keith, and moves the Court for an order staying the execution and enforcement of the judgment of the Superior Court of the State of Washington in and for the County of Klickitat and staying the sending down of a remittitur affirming the judgment of said court for a period of thirty (30) days from this date.

This motion is based upon the records and files herein and upon the affidavit of Lyle Keith hereto attached.

Dated this 10th day of February 1941.

LYLE KEITH,
United States Attorney for the
Eastern District of Washington,
Attorney for defendant and appellant.

Respondent joins in motion herein Feb. 10, 1941.

T. H. LITTLE,
Asst. Atty. Genl. for Resp.

[File endorsement omitted.]

52 In Supreme Court of Washington

[Title omitted.]

Affidavit in support of motion to stay remittitur

STATE OF WASHINGTON,
County of Thurston, ss:

Lyle Keith, being first duly sworn, upon oath deposes and says:

That he is the duly appointed, qualified, and acting United States Attorney for the Eastern District of Washington and that as such he is the attorney for the defendant and appellant herein;

That immediately upon receipt of advice that the judgment of the Superior Court of the State of Washington in and for Klickitat County had been affirmed by this court, notice of that fact was transmitted to the Attorney General of the United States; that as soon as copies of the opinion became available to affiant, copies of said opinion were transmitted to the Attorney General of the United States for study and consideration by the Department of Justice;

That affiant has unqualifiedly recommended to the Attorney General of the United States that an application for writ of certiorari be made to the Supreme Court of the United States of America and that his recommendation has been concurred in by Kenneth R. L. Simmons, who is associated with him in the defense of Sampson Tulee; that affiant is informed and believes that the Bureau of Indian Affairs of the Department of the Interior has recommended to the Attorney General of the United States that an application for writ of certiorari be made;

53 That by law and the rules of the Department of Justice, the determination of whether or not an appeal in any case shall be taken is left with the Solicitor General of the United States;

That affiant has been directed by the Attorney General of the United States to make application for a stay of proceeding so that ample consideration may be given by the Solicitor General to the question of whether or not application for writ of certiorari shall be made.

LYLE KEITH.

Subscribed and sworn to before me this 10th day of February 1941.

[SEAL]

JENNIE M. TATTERSALL,
Notary Public in and for the State of Washington, residing at ——.

54 In the Supreme Court of Washington

[Title omitted.]

Order staying remittitur

Feb. 10, 1941

This matter coming on for hearing on the motion of Lyle Keith, attorney for the defendant and appellant, and for an order staying execution and enforcement of the judgment of the Superior Court of the State of Washington in and for Klickitat County and staying the sending down of the remittitur to said court for a period of thirty (30) days.

It is ordered that the execution and enforcement of the judgment of this court and of the Superior Court of the State of Washington in and for Klickitat County be, and it hereby is, stayed for a period of thirty (30) days from the date hereof;

It is further ordered that a remittitur shall not be transmitted to the Superior Court of the State of Washington in and for the County of Klickitat during said thirty (30) day period.

Done this 10 day of February 1941.

JOHN S. ROBINSON,
Chief Justice of the Supreme Court of the State of Washington.

[File endorsement omitted.]

55 In Supreme Court of Washington

[Title omitted.]

Motion for further stay of remittitur

Filed March 11, 1941

Comes now the State of Washington, respondent in the cause herein, and apprises this Honorable Court that a telegraphic intelligence has been received from the United States District Attorney for the Eastern District of Washington, attorney for the defendant and appellant herein, to the effect that the Solicitor General of the United States has not reached a final decision as to whether the United States Government should apply for a writ of certiorari, and requesting the Attorney General of the State of Washington to join in a petition for a further stay of proceedings in the cause herein.

The Attorney General of the State of Washington concurs in such a petition and now moves this Honorable Court for an order

further staying the execution and enforcement of the judgment of the Superior Court of the State of Washington in and for the County of Klickitat and staying the sending down of a remittitur affirming the judgment of said court for a period of thirty (30) days from this date.

Dated this 11th day of March 1941.

SMITH TROY,
Attorney General,
By T. H. LITTLE,
T. H. Little,
Assistant Attorney General.

[File endorsement omitted.]

56 In the Supreme Court of Washington

[Title omitted.]

Order staying remittitur

March 11, 1941

This matter coming on for hearing on the motion of the Attorney General of the State of Washington by and through T. H. Little, Assistant Attorney General, attorney for respondent, for an order further staying the execution and enforcement of the judgment of the Superior Court of the State of Washington in and for Klickitat County and staying the sending down of the remittitur to said court for a period of thirty days.

It is ordered that the execution and enforcement of the judgment of this court and of the Superior Court of the State of Washington in and for Klickitat County be, and it hereby is, stayed for a period of thirty (30) days from the date hereof;

It is further ordered that a remittitur shall not be transmitted to the Superior Court of the State of Washington in and for the County of Klickitat during said thirty (30) day period.

Done this 11th day of March 1941.

JOHN S. ROBINSON,
Chief Justice of the Supreme Court of the State of Washington.

[File endorsement omitted.]

57 In the Supreme Court of Washington

STATE OF WASHINGTON, RESPONDENT,

vs.

SAMPSON TULEE, APPELLANT

Judgment

April 2, 1941

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of Klickitat County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 2nd day of April A. D. 1941, on motion of Smith Troy, Esquire, of counsel for respondent, considered, adjudged, and decreed, that the judgment of the said Superior Court be, and the same is hereby affirmed with costs; and that the said State of Washington have and recover of and from the said Sampson Tulee the costs of this action taxed and allowed at One hundred thirteen and 40/100 ($113.40) Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

Of record in Volume 35 at page 413 of the records and files of the Supreme Court of the State of Washington.

58 In the Supreme Court of Washington

[Title omitted.]

Motion for further stay of remittitur

Filed April 7, 1941

Comes now the State of Washington, respondent in the cause herein, and apprises this Honorable Court that telegraphic advice has been received from the Department of Justice in Washington, D. C., to the effect that the United States Government has decided to appeal from the decision of the Supreme Court herein, and requests a further order staying the remittitur for a further thirty (30) days or until May 10, 1941.

The Attorney General of the State of Washington is agreeable to such continuance and now moves this Honorable Court for an order further staying the execution and enforcement of the judgment of the Superior Court of the State of Washington in

and for the County of Klickitat; and staying the sending down of a remittitur affirming the judgment of said Court for a period of thirty (30) days from April 10, 1941.

Dated this 5th day of April 1941.

SMITH TROY,
Attorney General,
By T. H. LITTLE,
Asst. Attorney General,
Attorneys for Respondent, State of Washington.

[File endorsement omitted.]

59 In the Supreme Court of Washington

[Title omitted.]

Order staying remittitur

April 7, 1941

This matter came on for hearing on the motion of the Attorney General of the State of Washington, by and through T. H. Little, Assistant Attorney General, attorney for respondent, for an order further staying the execution and enforcement of the judgment of the Superior Court of the State of Washington, in and for Klickitat County, and staying the sending down of the remittitur to said court for a period of thirty (30) days from April 10, 1941, it is

Ordered that the execution and enforcement of the judgment of this court and of the Superior Court of the State of Washington in and for Klickitat County be and hereby is stayed for a period of thirty (30) days from April 10, 1941.

It is further ordered that the remittitur shall not be transmitted to the Superior Court of the State of Washington in and for the County of Klickitat during said thirty (30) day period.

Dated this 7th day of April 1941.

JOHN S. ROBINSON,
Chief Justice.

[File endorsement omitted.]

60 In the Supreme Court of Washington

[Title omitted.]

Motion for further stay of rimittitur

Filed May 8, 1941

Comes now the defendant, Sampson Tulee, appellant, in the above entitled cause, by and through his attorneys, Nathan R.

Margold, Solicitor, Department of the Interior, and Kenneth R. L. Simmons, District Counsel, Department of the Interior, and apprises this Honorable Court that additional time is required by said attorneys to perfect the appeal from the decision of the Supreme Court of the State of Washington herein to the Supreme Court of the United States, and requesting a further order staying the remittitur in said cause for a further thirty (30) days, or until June 9, 1941.

The defendant, Sampson Tulee, through his attorneys, respectfully moves this Honorable Court for an order further staying the execution and enforcement of the judgment of the Superior Court of the State of Washington, in and for the County of Klickitat, and staying the sending down of a remittitur affirming the judgment of said Court for a period of thirty (30) days from May 10, 1941.

Dated this 6th day of May 1941.

NATHAN R. MARGOLD,
Solicitor, Department of the Interior.
KENNETH R. L. SIMMONS,
District Counsel,
Office of the Solicitors, Department of Interior,
Attorneys for Appellant, Sampson Tulee.

[File endorsement omitted.]

61 Due, legal and personal service of the foregoing motion and receipt of a true copy thereof is hereby acknowledged this 6th day of May 1941.

SMITH TROY,
Attorney General for the State of Washington,
T. H. LITTLE,
Assistant Attorney General for the State of Washington,
Counsel for State of Washington, Respondent.

63 In the Supreme Court of Washington

[Title omitted.]

Order staying remittitur

May 8, 1941

This matter coming on for hearing on the motion of Nathan R. Margold, Solicitor, Department of the Interior, and Kenneth R. L. Simmons, District Counsel, Department of the Interior, attorneys

for appellant, Sampson Tulee, for an order further staying the execution and enforcement of the judgment of the Superior Court of the State of Washington, in and for Klickitat County, and staying the sending down of the remittitur to said Court for a period of thirty (30) days from May 10, 1941, it is

Ordered that the execution and enforcement of the judgment of this Court and of the Superior Court of the State of Washington, in and for Klickitat County, be and hereby is stayed for a period of thirty (30) days from May 10, 1941.

It is further ordered that the remittitur shall not be transmitted to the Superior Court of the State of Washington, in and for the County of Klickitat, during the said thirty (30) day period.

Dated this 8th day of May 1941.

WALTER B. BEALS,
Acting Chief Justice,
Supreme Court, State of Washington.

[File endorsement omitted.]

65 In the Supreme Court of Washington

[Title omitted.]

Motion for further stay of remittitur

Filed June 5, 1941

Comes now the defendant, Sampson Tulee, appellant, in the above entitled cause, by and through his attorneys, Nathan R. Margold, Solicitor, Department of the Interior, and Kenneth R. L. Simmons, District Counsel, Department of the Interior, and apprises this Court that additional time is required by said attorneys to perfect the appeal from the decision of the Supreme Court of the State of Washington herein to the Supreme Court of the United States, and requesting a further order staying the remittitur in said cause for the full period of three (3) months after the entry of the final judgment in this cause, entered on April 2, 1941, to and including June 30, 1941.

The defendant, Sampson Tulee, through his attorneys, respectfully moved this Honorable Court for an order further staying the execution and enforcement of the judgment of the Superior Court of the State of Washington, in and for the County of Klickitat, and staying the sending down of a remittitur affirming

the judgment of said Court for a further period from June 9, 1941 to and including June 30, 1941.

66 Dated this 5th day of June 1941.

NATHAN R. MARGOLD, *Solicitor,*
Department of the Interior.
KENNETH R. L. SIMMONS,
District Counsel,
Office of the Solicitor, Department of Interior,
Attorneys for Appellant, Sampson Tulee.

[File endorsement omitted.]

67 Due, legal and personal service of the foregoing motion and receipt of a true copy thereof is hereby acknowledged this 5 day of June 1941.

SMITH TROY,
Attorney General for the State of Washington,
By T. H. LITTLE,
Assistant Attorney General for the State of Washington,
Counsel for State of Washington, Respondent.

No Objections to Motion.
T. H. LITTLE.

69 In the Supreme Court of Washington

[Title omitted.]

Order staying remittitur

Filed June 5, 1941

This matter coming on for hearing on the motion of Nathan R. Margold, Solicitor, Department of the Interior, and Kenneth R. L. Simmons, District Counsel, Department of the Interior, attorneys for appellant, Sampson Tulee, for an order further staying the execution and enforcement of the judgment of the Superior Court of the State of Washington, in and for Klickitat County, and staying the sending down of the remittitur to said Court for a further period from June 9, 1941 to and including June 30, 1941, it is

Ordered that the execution and enforcement of the judgment of this Court and of the Superior Court of the State of Washington, in and for Klickitat County, be and hereby is stayed from June 9, 1941 to and including June 30, 1941.

It is further ordered that the remittitur shall not be transmitted to the Superior Court of the State of Washington, in and for the County of Klickitat, during the period from June 9, 1941 to and including June 30, 1941.

JOHN S. ROBINSON,
Chief Justice Supreme Court,
State of Washington.

[File endorsement omitted.]

71 Supreme Court of the United States

[Title omitted.]

Petition for appeal

Filed June 30, 1941

To the Chief Justice or Presiding Judge of the Supreme Court of the State of Washington:

1. Sampson Tulee, considering himself aggrieved, hereby prays that an appeal to the Supreme Court of the United States be allowed from the final judgment rendered in the above entitled case on April 2, 1941, in the Supreme Court of the State of Washington, the highest court in the state.

2. The said final judgment affirmed a judgment in the Superior Court of the State of Washington for Klickitat County convicting and sentencing appellant for a misdemeanor of which he had been found guilty by a jury after a trial on charges preferred against him by the state in an amended information.

3. The amended information alleged that appellant, "a member of the Yakima Indian Tribe" had caught salmon "at Spearfish on the Columbia River * * * one of the usual and accustomed ancient fishing places of said Yakami Tribe of Indians as defined in the Yakima Indian Treaty of June 9, 1855 (12 Stat. 951); and off
72 the Reservation of said Indians, * * * without first having obtained a license for the taking thereof as required by Section 5703, Remington's Revised Statutes of Washington."

4. As appears more fully from the "Statement as to Jurisdiction" submitted simultaneously herewith by appellant, his defense has been based not on any denial of the truth of the facts alleged in the amended information, but (1) on a claim of right under the said treaty to fish for salmon, in the manner and at the time and place alleged, without interference from the state and without obtaining a license pursuant to the said Section 5703, and (2) on

an insistence that the said Section 5703, if and as interpreted and applied to the conduct for which appellant is being prosecuted in this case, is repugnant to the said treaty of the United States and also to the Constitution of the United States. Each of these grounds of defense has specifically been urged on appellant's behalf at appropriate stages of this litigation. The validity of Section 5703 of the Revised Statutes of the State of Washington on the ground of its being repugnant to a treaty of the United States and on the ground of its being repugnant to the Constitution of the United States was expressly drawn in question in the Superior Court by objections and exceptions of record both to an instruction given by that court to the jury at the request of the state and to a refusal by the court to give certain instructions requested by appellant. The validity of the state statute was again drawn in question on the same grounds before the state Supreme Court by the assignments of error on which the appeal to that court was based; the questions thus raised were fully argued both orally and in printed briefs and were necessarily before the said court, sitting en banc; and the decision in that court, the highest in the state in which a decision could be had in this case, was in favor of the validity of the said state statute. Now, by this petition and by the assignment of errors, statement as to jurisdiction and other papers being submitted herewith, appellant seeks
73 a final and authoritative determination of the said questions by the Supreme Court of the United States.

5. This case is one in which, under the legislation in force when the Act of Congress of January 31, 1928, was passed, a review could be had in the Supreme Court of the United States on writ of error and in which, under the present laws of the United States and rules of the said court, appellant is now entitled to such a review on appeal.

6. No previous application has ever been made for the relief prayed for herein.

Wherefore, Sampson Tulee prays (1) that an appeal to the Supreme Court of the United States be allowed from the final decision and judgment rendered in this case on April 2, 1941, in the Supreme Court of the State of Washington, in order that the said decision and judgment may be reviewed and reversed, and (2) that the Clerk of the Supreme Court of the State of Washington be directed to make and transmit to the Supreme Court of the United States, under his hand and the seal of the Supreme Court of the State of Washington, a true copy of the material parts of the record herein to be designated by praecipe or stipulation of the parties or their counsel herein, as provided by law and

in conformity with the rules of the Supreme Court of the United States.

Dated, June 30, 1941.

NATHAN R. MARGOLD,
Nathan R. Margold,
Solicitor of the United States
Department of the Interior,
Washington, D. C.,
KENNETH R. L. SIMMONS,
Kenneth R. L. Simmons,
District Counsel,
Office of the Solicitor of the United States Department of the Interior, Fratt Building, Billings, Montana,
Counsel for Appellant.

74 Supreme Court of the United States

[Title omitted.]

Assignment of errors

Filed June 30, 1941

Sampson Tulee, defendant in the above entitled case and applicant for the allowance for an appeal to the Supreme Court of the United States, assigns the following errors in the record and proceedings in the said cause:

The Supreme Court of the State of Washington erred:

1. In affirming the judgment of conviction and sentence entered against him in the Superior Court of the State of Washington for Klickitat County.

2. In holding that Section 5703, Remington's Revised Statutes of the State of Washington was applicable to the exercise of his fishing rights under the Treaty of June 9, 1855 between the Yakima Nation of Indians and the United States (12 Stat. 951) involved in this case.

3. In holding that the said Section 5703, as so applied, is a valid exercise of regulatory power residing in the State of Washington.

4. In failing to hold that the said Section 5703, as so applied, is repugnant to the said treaty and invalid.

5. In failing to hold that the said Section 5703, as so applied, is repugnant to the Constitution of the United States and invalid on the ground that it attempts to regulate and restrict a subject matter relating to an Indian ward of the United States with respect to which the United States is exercising a protective

75 interest in favor of the said Indian and which is therefore exclusively within the jurisdiction and power of the United States.

6. In failing to reverse the said judgment on the grounds (a) that the trial court erred in overruling defendant's demurrer to the amended information; (b) that the trial court erred in denying defendant's motion for a directed verdict; (c) that the trial court erred in granting plaintiff's request for instruction No. 4 and in giving the said instruction to the jury; (d) that the trial court erred in refusing to grant defendant's requests for instructions Nos. 1 and 2, and in failing to give the said instructions to the jury; (e) that the trial court erred in denying defendant's motion in arrest of judgment; and (f) that the trial court erred in denying appellants motion for a new trial.

For which errors, Sampson Tulee prays that the said judgment of the Supreme Court of the State of Washington, dated and entered April 2, 1941, in the above entitled cause, be reversed and that judgment entered in favor of the said Sampson Tulee, appellant, herein.

Dated June 30, 1941.

NATHAN R. MARGOLD,
Nathan R. Margold,
Solicitor of the United States
Department of the Interior,
Washington, D. C.

KENNETH R. L. SIMMONS,
Kenneth R. L. Simmons,
District Counsel,
Office of the Solicitor of the United States
Department of the Interior, Pratt Building,
Billings, Montana,
Counsel for Appellant.

76 Due, legal and personal service of the within and foregoing petition for appeal, assignment of errors and prayer for reversal and receipt of a true copy thereof is hereby acknowledged this 30th day of June 1941.

SMITH TROY,
Attorney General for the State of Washington.
T. H. LITTLE,
Assistant Attorney General for the State of Washington.
Counsel for appellee.

[File endorsement omitted.]

[Title omitted.]
[File endorsement omitted.]

Order allowing appeal

June 30, 1941

The appellant, Sampson Tulee, in the above entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of Washington, on the 2nd day of April, 1941, and from each and every part thereof and having presented and filed his petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the statutes of the United States and rules of the Supreme Court of the United States in such cases made and provided;

Now, therefore, it is ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Washington in the above entitled cause; and

It is further ordered that the Clerk of the Supreme Court of the State of Washington shall within 60 days from the date hereof make and transmit to the Supreme Court of the United States, under his hand and the seal of said Court, a true
79 copy of the material parts of the record, herein, which shall be designated by praecipe or stipulation of the parties or their counsel herein, pursuant to law and in conformity with the rules of the Supreme Court of the United States; and

It is further ordered that the filing of a bond as security for costs on appeal be and the same is hereby waived.

Dated this 30th day of June 1941.

JOHN S. ROBINSON,
Chief Justice of the Supreme Court of the State of Washington.

Due, legal and personal service of the within and foregoing order allowing appeal and receipt of a true copy thereof is hereby acknowledged this 30th day of June, 1941.

SMITH TROY,
Attorney General for the State of Washington,

T. H. LITTLE,
Assistant Attorney General for the State of Washington, Counsel for Appellee.

81 Supreme Court of the United States

[Title omitted.]

Certificate of Chief Justice of the Supreme Court of Washington re Federal questions

June 30, 1941

I, John S. Robinson, Chief Justice of the Supreme Court of the State of Washington, certify:

I

That a final judgment in the above entitled suit in the Supreme Court of the State of Washington, the highest court of the State of Washington in which a decision in the suit could be had, was made and entered in said Supreme Court of the State of Washington on April 2, 1941, on which date the judgment in the above entitled cause became final for purposes of appeal to and review by the Supreme Court of the United States.

II

That in said suit there is drawn in question the validity of a statute of the State of Washington, to wit: Section 5703, Remington's Revised Statutes of the State of Washington, on the ground of its being repugnant to the Yakima Treaty of June 9, 1855 (12 Stat. 951), between the United States and the Yakima Tribe of Indians, and to the Constitution of the United States and the decision of the Supreme Court of the State of Washington is in favor of its validity.

82 III

That said Sampson Tulee, appellant herein, duly and properly raised the following substantial Federal questions which were considered and passed upon by the Supreme Court of the State of Washington, and are available for review by the Supreme Court of the United States on appeal, to wit:

(A) That said statute is repugnant to and infringes upon the Yakima Treaty of June 9, 1855 (12 Stat. 951).

(B) That said statute is repugnant to and infringes upon the due process clause (Section 1) of the Fourteenth Amendment to the Constitution of the United States.

Dated at Olympia, Washington, this 30th day of June 1941.

JOHN S. ROBINSON,
Chief Justice of the Supreme Court of the State of Washington.

[Title endorsement omitted.]

146 [Citation in usual form showing service on Smith Troy, omitted in printing.]

152 Supreme Court of the United States

[Title omitted.]

Certificate of filing appeal papers

June 30, 1941

I, Benj. T. Hart, Clerk of the Supreme Court of the State of Washington, do hereby certify that the following papers were filed with me as such Clerk on June 30th, 1941, in the above entitled cause, to wit:

1. Petition for appeal to the Supreme Court of the United States, assignment of errors and prayer for reversal.
2. Jurisdictional statement.
3. Certificate of the Chief Justice of the Supreme Court of the State of Washington.
4. Order allowing appeal.
5. Praecipe.

Dated at Olympia, Washington, June 30th, 1941.

BENJ. T. HART,
Clerk of the Supreme Court of the State of Washington.

[File endorsement omitted.]

154 In the Supreme Court of Washington

[Title omitted.]

Praecipe for substitution of appearances

June 30, 1941

To the Clerk:

Please withdraw the name of Lyle Keith appearing as Assistant United States Attorney for the Eastern District of Washington

as one of the counsel for the appellant in the above entitled cause and substitute therefor Nathan R. Margold, Solicitor of the Department of the Interior.

Dated at Olympia, Washington, this 30th day of June 1941.

KENNETH R. L. SIMMONS,
of Counsel for Appellant.

Due and legal service of the foregoing Praecipe and receipt of a true copy thereof is acknowledged this 30th day of June 1941.

SMITH TROY,
Attorney General,
T. H. LITTLE,
Asst. Atty. Gen'l,
Counsel for Appellee.

[File endorsement omitted.]

155 : Supreme Court of the United States

[Title omitted.]

Praecipe for record

Filed June 30, 1941

To the Clerk of the Supreme Court
of the State of Washington,
Olympia, Washington:

You are hereby requested, within the time specified in an order dated June 30th, 1941 allowing an appeal herein, to make and transmit to the Supreme Court of the United States under your hand and the seal of the Supreme Court of the State of Washington, a true copy of the following material parts of the record herein, which shall compose the transcript of record herein, to wit:

1. The entire record in the Superior Court for Klickitat County and in the Supreme Court of the State of Washington.
2. Opinion and final judgment of the Supreme Court of the State of Washington, dated April 2, 1941.
3. Petition for appeal, assignment of errors and prayer for reversal, with acknowledgment of service.
4. Jurisdictional statement with acknowledgment of service.
5. Certificate of Chief Justice of Supreme Court of the State of Washington.
6. Order allowing appeal, with acknowledgment of service.

[File endorsement omitted.]

156 7. Citation with proof of service.
8. Praecipe with acknowledgment of service.
9. Statement directing appellee's attention to the provisions of paragraph 3 of rule 12 of the Revised Rules of the Supreme Court of the United States, with acknowledgment of service.
10. Statement of appellee in pursuance to paragraph 3 of rule 12 of the Revised Rules of the Supreme Court of the United States, with acknowledgment of service.
11. Certificate of filing appeal papers with the Clerk of the Supreme Court of the State of Washington, dated June 30th, 1941.

NATHAN R. MARGOLD,
Solicitor,
Department of the Interior,
KENNETH R. L. SIMMONS,
District Counsel,
Office of the Solicitor, Department of Interior,
Counsel for Appellant.

Due, legal and personal service of the within and foregoing praecipe and receipt of a true copy thereof is hereby acknowledged this 30th day of June, 1941.

SMITH TROY,
Attorney General for the State of Washington,
T. H. LITTLE,
Assistant Attorney General for the State of Washington,
Counsel for Appellee.

158 [Clerk's certificate to foregoing transcript omitted in printing.]

160 Supreme Court of the United States

[Title omitted.]

Stipulation re transmittal of original statement of facts

June 30, 1941

It is hereby stipulated by and between the parties hereto by and through their respective counsel that the original transcript of the testimony and the record taken at the trial of the above entitled cause in the Superior Court in and for Klickitat County, State of Washington, and all exhibits filed in the Supreme Court of the State of Washington in the said cause as a part of the record may be certified and transmitted by the Clerk of the

Supreme Court of the State of Washington to the Supreme Court of the United States, the same to be returned to the Clerk of the Supreme Court of the State of Washington following final disposition of said cause.

Signed and dated at Olympia, Washington, this 30th day of June 1941.

KENNETH R. L. SIMMONS,
of Counsel for Appellant,
SMITH TROY,
Attorney General,
T. H. LITTLE,
Ass't Att'y Gen'l.,
Counsel for Appellee.

Approved this 30th day of June 1941.

JOHN S. ROBINSON,
Chief Justice.

[File endorsement omitted.]

161 In the Superior Court of Klickitat County

[Title omitted.]

Statement of facts

Filed June 5, 1940

162 *Notice and service*

TO THE ABOVE NAMED PLAINTIFF, AND TO
MR. EDGAR H. CANFIELD AND MR.
T. H. LITTLE, IT'S ATTORNEYS:

You, and each of you, are hereby notified that the above named Defendant, Sampson Tulee, has prepared and filed with the clerk of the above entitled court a proposed statement of facts, a copy of which is herewith served upon you.

You are further notified that the said Defendant will, at the time said Statement of Facts is certified, ask the Court to order attached and made a part of said Statement of Facts all of the exhibits received or offered in evidence on the trial, or copies thereof.

Dated at Spokane, Washington, this 27th day of May 1940.

LYLE KEITH,
KENNETH R. L. SIMMONS,
Attorneys for Defendant.

Service of the above and foregoing Notice, and of the Statement of Facts thereto attached, by true copy thereof, is hereby acknowledged this 27 day of May 1940.

SMITH TROY,
Atty. Gen'l,
By T. H. LITTLE,
Ass't Atty. Gen'l.,
Attorneys for Plaintiff.
EDGAR H. CANFIELD,
Prosecuting Attorney.

163 In Superior Court of Klickitat County

[Title omitted.]

Date, May 10, 1940, 9 A. M.
At Goldendale, Washington.
Before Hon. J. E. Stone, Judge, and a Jury.

Appearances

For the Plaintiff, Mr. Edgar H. Canfield, Prosecuting Attorney for Klickitat County. Mr. T. H. Little, Assistant Attorney General.

For the Defendant: Mr. Sam M. Driver, U. S. District Attorney; Mr. Lyle Keith, Asst. U. S. Attorney; Mr. Kenneth R. L. Simmons, District Counsel, Dept. of Interior.

164 On this 10th day of May 1940 the above-entitled cause came on for hearing and for trial before the Honorable J. E. Stone, and a Jury duly empanelled and sworn to try the same. Plaintiff appearing by Mr. Edgar H. Canfield, duly elected and qualified prosecuting attorney in and for the County of Klickitat, and Mr. T. H. Little, Assistant Attorney General of the State of Washington, and defendant appearing in person and by Mr. Sam M. Driver, United States District Attorney for the Eastern District of Washington, Mr. Lyle Keith, Assistant District Attorney and Mr. Jenneth R. L. Simmons, District Counsel, Department of the Interior, and all parties having announced ready for trial, the following proceedings were had, testimony taken, and exhibits introduced.

Jury called, empanelled, and sworn.

Statement of Mr. Canfield

Mr. CANFIELD. Gentlemen of the Jury: This is a criminal action in which the state of Washington is plaintiff and Sampson

Tulee is defendant. The Prosecuting Attorney has accused Sampson Tulee of the illegal taking and sale of commercial food fish. The state will prove that on the 6th day of May 1939 Sampson Tulee was fishing at Spearfish; that on that day he caught certain salmon that are defined as food fish; that he had not previously acquired a license as he was required to do by the Statutes of the State of Washington; the defendant has entered a plea of Not Guilty to this charge, and, of course, that raises all issues, particularly the issue of catching fish, and the issue of whether or not he had a license. For all intents and purposes those are the only issues involved in this case.

165 DON S. JOHNSON, a witness called for and on behalf of the plaintiff, having been duly sworn, testified as follows on

Direct examination by Mr. CANFIELD:

Q. Your name is Don S. Johnson?

Mr. DRIVER. I would like to make a motion at this time; the defendant objects to any testimony on the part of the State in support of the amended information on the ground the amended information does not state a crime, and on the ground the information contains matter which, if true, would constitute a defense and a legal bar to the action.

Judge STONE. Motion denied.

Q. You are chief of the police patrol officers of the Department of Fisheries of the State of Washington?

A. Yes.

Q. How long have you been such chief patrol officer?

A. Since 1937.

Q. You were such patrol officer of the State Department of Fisheries on the 6th day of May 1939?

A. Yes.

Q. I will ask you whether or not Officer S. P. Phillips and John Turner were duly authorized fish inspectors of your department on the 6th day of May 1939?

A. That's right.

Q. They were authorized to enforce all the rules and regulations of the State Fisheries Department?

A. Yes.

Q. And all the laws of the State of Washington relative
166 to Fisheries and fishing?

A. Yes.

Mr. CANFIELD. That's all.

Mr. DRIVER. No questions.

S. P. PHILLIPS, a witness called and sworn, testified as follows on

Direct examination by Mr. CANFIELD:

Q. Your name is S. P. Phillips?
A. Yes.
Q. You are an inspector of the State Fisheries Department?
A. That's right.
Q. Will you tell the jury where you were on May 6th, 1939?
A. Over at Spearfish, Washington.
Q. Is that in this county?
A. Yes.
Q. Did you make an arrest on that day?
A. Yes, sir.
Q. Tell the jury whom you arrested on that day.
A. I arrested Mr. Sampson Tulee.
Q. For what offense did you arrest him?
A. Fishing without a license for salmon.
Q. Did you see Mr. Tulee in the act of fishing?
A. Yes, sir.
Q. At that time did you request to see his license?
A. Yes.
Q. Did he have a license?
A. No.
167 Q. Did you see Mr. Tulee in the act of selling fish?
A. Yes, sir.
Q. To whom was he selling the fish?
A. The Columbia River Packers Association at Spearfish.
Q. That sale then was made in Klickitat County, state of Washington?
A. Yes.
Q. You say you asked Mr. Tulee whether or not he had a license?
A. Yes.
Q. And he had none?
A. No; he didn't have any.

Cross examination by Mr. DRIVER:

Q. Where was it you saw him fishing; was it over on a little island back of the Packers buying station?
A. Yes.
Q. He was on a rock in the river at that time, was he not?
A. Yes; on kind of a platform.
Q. What was he using?
A. A dip net.
Q. That's a net on the end of a pole, is it?
A. Yes.
Q. And was the place where he was fishing here in Klickitat County?

A. Yes.

Q. You are sure that is in Klickitat County?

A. Yes; I am sure.

Q. How long have you been an inspector of the State
168 Department of Fisheries?

A. Twelve years.

Q. How long have you been familiar with that particular fishing site?

A. Oh, I have been up here for the past ten years.

Q. During all that time have the Indians fished there?

A. Yes, sir.

Q. It is opposite what is commonly known as Celilo Falls?

A. Yes.

Q. I presume, Mr. Phillips, as State Inspector, or inspector for the State Department of Fisheries you have to do quite a bit with Indians fishing along the Columbia?

A. I do at that time of year.

Q. Are you familiar with the provisions of the Act of 1855 that has provisions about Indians fishing at their old and usual and accustomed places off the reservation?

A. I believe there is something similar to that in the treaty.

Q. This spot so far as your department is concerned is a place recognized as one of those old fishing stations mentioned in the Yakima treaty?

A. I presume all along the Columbia River on the Reservation—off the reservation—I don't know about the Treaty.

Q. During, then, the time you have been familiar with it the Indians have fished at this same spot where Tulee was fishing?

A. Yes.

Q. This spot where he was fishing is commonly known and called Spearfish?

A. Yes.

169 Redirect examination by Mr. CANFIELD:

Q. Is Sampson Tulee in the Court room now?

A. Yes; that is Tulee [indicating].

Q. Down at the end of the table?

A. Yes.

Recross-examination by Mr. DRIVER:

Q. Was Sampson Tulee fishing for and catching salmon?

A. Yes.

Q. Is that what he actually sold—salmon?

A. Yes, sir.

Witness excused.

JOHN TURNER, a witness called for and on behalf of the Plaintiff, having been duly sworn, testified as follows on

Direct examination by Mr. CANFIELD:

Q. Your name is John Turner?
A. Yes, sir.
Q. You are a fish inspector for the State Department of Fisheries?
A. Yes, sir.
Q. How long have you been such inspector?
A. Ten years.
Q. Where were you on the 6th day of May 1939?
A. Down at Spearfish.
Q. On that day you were acting as inspector of the State Department of Fisheries?
A. Yes.
Q. Did you make an arrest on that day?
A. Yes.
Q. Whom did you arrest?
170 A. Mr. Sampson Tulee.
Q. Is he in the courtroom at this time?
A. Yes; the gentleman at the end of the table.
Q. At that time what was Mr. Tulee doing?
A. He was fishing.
Q. How was he fishing?
A. With a dip bag net.
Q. In the Columbia River, was he?
A. Yes, sir.
Q. The place he was fishing was a place off the reservation, was it?
A. Yes, sir.
Q. You know that of your own knowledge, do you?
A. Yes.
Q. Did you see Mr. Tulee catch any fish?
A. Yes.
Q. What kind of fish did he catch?
A. Salmon.
Q. Did you ask him if he had a license at that time?
A. I did.
Q. What did he answer?
A. "No."
Q. Did you see Mr. Tulee in the act of selling fish on that day?
A. Yes.
Q. Where did he sell the fish?
A. To the Columbia River Packers buying station.

Q. Where?
A. Right straight up the river from where he was fishing.
Q. What kind of fish was he selling?
A. Chinook Salmon.

Q. Do you know the requirements that are made of
171 these fish buyers in regard to making reports?
A. Yes.
Q. Tell the jury what the requirements are.
A. They have a buyer's report book, and a triplicate—duplicate in the book. When they buy fish from a fisherman they have to put down his name and the poundage, how many pounds they bought on every day—they have to keep a daily record of it and every day tear out one sheet and send to our department, and one sheet goes to the Cannery.
Mr. CANFIELD. That's all.

Cross-examination by Mr. DRIVER:

Q. How long have you been an inspector for the State Fisheries Department?
A. Ten years.
Q. During all of that time have you been familiar with this place where Sampson Tulee was fishing?
A. I have been there every year for ten years.
Q. Known as Spearfish?
A. Yes.
Q. During the ten years you have been acquainted with this place have the Yakima Indians fished there each season?
A. Yes; I think they have.
Q. The place where he was fishing was in Klickitat County?
A. Yes, sir.
Witness excused.

WILLIAM YALLUP, a witness called for and on behalf of the State, having been first duly sworn thru the Interpreter, Thomas Yallup, testified as follows:

THOMAS YALLUP, having been sworn to act as interpreter as follows:

172 INTERPRETER'S OATH AS GIVEN TO THOMAS YALLUP

"You do solemnly swear that you will well and truly present to the witnesses any and all questions propounded by the Court or Counsel, and that you will well and truly interpret their answers to the same into the English language, So Help You, God."

Direct examination by Mr. CANFIELD:

Q. What is your name?

A. William Yallup.

Q. What is your age?

A. 74.

Q. Are you a member of the Yakima Indian Tribe?

A. Yes.

Q. Are you familiar with the fishing grounds at Spearfish?

A. Yes.

Q. Did your father before you use the fishing grounds at Spearfish?

A. Yes; a long time before my time when he started fishing there.

Q. Do you know if your father used the fishing ground at Spearfish in 1855, at the time the Treaty with Governor Stevens was signed?

A. Yes; he had been fishing it before that treaty was agreed on at Wala Wala—so did his father.

Q. Do you know whether or not the fishing grounds at Spearfish were the ancient and accustomed fishing places as defined in this treaty of 1855?

A. Yes; it was the ancient accustomed fishing place, from time immemorial the Indians have fished there.

Cross-examination by Mr. SIMMONS:

Q. How old are you?

A. 74.

173 Q. What is your father's name?

A. Thampa.

Q. When did your father die?

A. Over fifty years ago.

Q. Do you know the age of your father approximately at the time of his death?

A. My father was pretty well along in years when he died.

Q. Was he over seventy years old?

A. I think he was seventy five years old when he died.

Q. Do you remember your father as a small boy? Is your memory good now so that you remember your father when you were a small boy?

A. As far as I can remember when I was a boy my father had fished along the river and one of the places was down at Spearfish.

Q. I didn't ask that at all. I will withdraw that question. How did your father support you and the family?

A. My father raised me with the game, the deer, and the game birds and different kinds of fish, and mother she helped—she went out and gathered roots, berries, and different kinds of roots.

Q. Did your father at any time tell you that he had caught salmon at Spearfish, the place set out in the amended information before June 9, 1855, and at the time of and after June 9, 1855, the date of the treaty between Yakima Indians and the United States?

A. Yes; he had fished before the treaty, and also after the treaty had been agreed on.

Q. And he had told you that he had fished at Spearfish, the place set out in the amended information—he told you he had fished at Spearfish, the place designated in the amended information?

174 A. Yes; my father used to come back with a lot of fish; fish he caught at Spearfish.

Q. Did your father explain at any time the method he used in trading this fish with the white settlers in the territory?

Mr. CANFIELD. I object to that—those points are not in issue.

Mr. SIMMONS. I am merely trying to prove this is one of the old and accustomed fishing stations—in fact, I am trying to make out the state's case. There has been no evidence, competent at least, before this time that this defendant was fishing at an old and accustomed fishing station, according to the Yakima treaty. I am trying to get some evidence in there was commercial fishing at Spearfish.

Judge STONE. I will permit the answer.

(Question read:) "Did your father explain at any time the method he used in trading this fish with the white settlers in the territory?"

A. Yes; my father said when the white settlers first came they went to the Indians where the Indians were fishing and the salmon was running, and then they traded them vegetables and even clothing, and later on traded money for the fresh salmon.

Witness excused.

175 JOBE CHARLEY, a witness called and sworn, testified by and thru Interpreter, Thomas Yallup.

Direct examination by Mr. CANFIELD:

Q. What is your name?

A. Jobe Charley.

Q. How old are you?

A. I am eighty years old.

Q. Are you a member of the Yakima Indian Tribe?

A. Yes. I am a member of the Yakima Tribe, and I was born at Spearfish.

Q. Do you know whether or not Spearfish in this county and on the Columbia River as set out in the amended information, is the usual and accustomed fishing place used by the Yakima tribe before, on and after June 9, 1855, the date of the treaty?

A. The name of this accustomed rock is Nannyx, and that has been fished by the Indians long before the treaty, and also after the treaty had been signed.

Q. That is the location known as Spearfish now, is it?

A. Yes.

Q. Is the Indian name Nannyx the same as the English name Spearfish—are they the same place?

A. That Spearfish is just the name that has just been given the station a few years ago.

Witness excused.

SAM POYET, a witness called and sworn, testified as follows (thru interpreter):

Direct examination by Mr. CANFIELD:

Q. What is your name and age?

A. Sam Poyet, and my age is seventy eight years old.

176 Q. Are you a member of the Yakima tribe of Indians?

A. I was born and raised along the river, then I went in and was allotted in the Yakima Reservation.

Q. Are you acquainted with and know about the fishing location at Spearfish?

A. I know of a rock which is Nannyx.

Q. Is Nannyx the same location as is now known by the name of Spearfish?

A. White man must have given that location the white man's name, and I don't know anything about it.

Q. Is it the same place?

A. As I said before I don't know this Spearfish, but I know it is Nannyx.

Q. Do you know the place where Sampson Tulee was arrested for fishing without a license?

A. I know where he was arrested and that location is the rock; the name of it is Nannyx.

Q. Is this location where Sampson Tulee was arrested, that is, the location set out in the amended complaint or information, is one of the usual and accustomed fishing places used by the Yakima tribe before and after June 9, 1855, when the Treaty was signed?

A. Whenever this world was created, from the time of the beginning the Indians have fished there.

Cross-examination by Mr. DRIVER:

Q. Was it the custom of the Indians to dry the fish they caught in the Columbia and powder them and use them for winter supplies?

A. It had been the custom of the Indians to dry the
177 fish and this powdered salmon, and there was another way of fixing that powdered salmon—they used salmon oil, and some of them dried lots of salmon and the Indians that wasn't fishing could come and trade, exchange different kinds of roots and berries for the fish.

Q. Did they also trade the powdered fish with the whites after the white men came?

A. No.

Q. I wonder if the witness understood my question. He testified the powdered fish was traded with the other Indians—did they also trade with the white people?

A. No——

Q. Did they trade fresh fish?

A. The dried fish the white people didn't want that powdered salmon, but they wanted fresh salmon.

Q. Did they trade fresh salmon with the whites?

A. The white man traded for the fresh salmon.

Mr. SIMMONS. May it please the Court, at this time I would like to have the record show that a certain stipulation has been entered into between the State of Washington and the defendant Sampson Tulee, and I would like to dictate it into the record:

Stipulation as to certain facts

It is stipulated and agreed by and between the State of Washington, plaintiff, and Sampson Tulee, defendant, thru their counsel of record in open court this 10th day of May 1940, that Spearfish, the location set out in the amended information on file in the action wherein the State of Washington is plaintiff against Sampson Tulee, defendant, cause No. C–672, was the usual and accustomed fishing place used by the members of the Yakima tribe of Indians to catch salmon and other fish before, on and after
178 June 9, 1855, continuously to the present time, as defined in the Yakima Treaty of June 9, 1855 (12 St. 951).

Let the record show that was agreed to by the plaintiff and defendant thru their attorneys.

Mr. CANFIELD. May the record show it is stipulated between the plaintiff, State of Washington, and the defendant, Sampson Tulee, that the Columbia River Packers Association, Inc., on May 6, 1939, purchased 413 pounds of salmon from Sampson Tulee, the

defendant in this case, the same being delivered to the packers and received by them at Spearfish, Klickitat County, Washington.

Mr. DRIVER. We agree to that.

Mr. CANFIELD. The State rests, your Honor.

Mr. DRIVER. I wish to make a motion.

Judge STONE. Very well.

Motion to dismiss, etc., and order denying same

Mr. DRIVER. The State having rested, the defendant moves that this action be dismissed or, in the alternative, that the Court instruct the Jury to return a verdict of "Not Guilty" on the ground and for the reason that the evidence adduced by the State is not sufficient to warrant or sustain a verdict of Guilty, and, also, because the evidence adduced by the state sets up and establishes matter which would be a legal bar and defense to the action.

Judge STONE. The Motions will be denied.

Mr. DRIVER. If the Court please, at this time I wish to file with the clerk some requested instructions for the defendant, and would like the clerk's records to show that copies were served upon the state.

Judge STONE. I assume these two should remain in the Court's file. Do you desire to have them marked "proposed 1" and "proposed 2"?

178 Mr. DRIVER. If the Court please, I offer in evidence Defendant's Exhibit No. 1, a certified photostatic copy of the minutes and proceedings and negotiations between Governor Stevens and the Yakima tribe of Indians preceding the signing of the Yakima Treaty of 1855.

Mr. CANFIELD. No objection.

Mr. DRIVER. In view of the fact that Exhibit 1 is a photostatic copy of the original which is in longhand and most difficult to read, I offer as Exhibit No. 2 a typed copy of Exhibit 1.

Mr. CANFIELD. No objection.

Judge STONE. Both exhibits will be received.

Whereupon the Court read his instructions to the Jury as follows:

Instructions to the Jury

Members of the Jury:

This is a criminal action, in which the State of Washington is plaintiff and Sampson Tulee is defendant. The State, by the Prosecuting Attorney, has charged the defendant with the crime of

ILLEGAL SALE AND TAKING OF COMMERCIAL FOOD FISH

That on or about the 6th day of May 1939, and within the last year immediately preceding the filing of this Amended Information, at Spearfish on the Columbia River in Klickitat County, Washington, the above-named Sampson Tulee, a member of the Yakima Indian Tribe, then and there being, did then and there catch, at one of the usual and accustomed ancient fishing places of said Yakima Tribe of Indians as defined in the Yakima Indian Treaty of June 9, 1855 (12 St. 951), and off the Reservation of said Indians, certain food fish, to wit: salmon; and did then and
180 there sell the same commercially without first having obtained a license for the taking thereof as required by section 5703, Remington Revised Statutes of Washington.

Instruction No. 2

To this Information the defendant has interposed a plea of not guilty thus raising every issue in this case and making it necessary for the State to prove to your satisfaction beyond a reasonable doubt every material element of the crime with which the accused stands charged.

Instruction No. 3

You are instructed that the laws of the state of Washington provide that every person, firm, or corporation using a dip bag net for the taking of salmon in the Columbia River shall pay therefor a license of five dollars per year.

Instruction No. 4

You are instructed that under the laws of the state of Washington the state has a right to regulate the taking of fish within its boundaries and on streams not included in or bordering upon the Yakima Indian Reservation; and that the defendant, Sampson Tulee, is as much subject to this right of state regulation as if he were not a member of the Yakima tribe when he is fishing on any stream not within or bordering upon said Indian Reservation.

Instruction No. 5

If it has appeared to you that the Court during the trial or in the giving of these instructions has commented on the evidence or indicated in any manner its opinion of the weight or convincing effect of any of the testimony you shall disregard such com-
181 ment entirely, for it is the jury and not the Court which must decide the issues of fact in this case.

Instruction No. 6

The Jury is further instructed that the doubt which entitles the defendant to an acquittal must be a doubt for which a reason exists. You are not to go beyond the evidence to hunt up doubts, nor must you entertain such doubts as are merely vague, imaginary, or conjectural. A reasonable doubt is such a doubt as exists in the mind of a reasonable man after he has fully, fairly, and carefully compared and considered all the evidence or lack of evidence introduced on the trial. If, after a careful consideration and comparison of all the evidence you can say you have an abiding conviction of the truth of the charge you are satisfied beyond a reasonable doubt.

Instruction No. 7

You are the sole judges of the evidence in this case of the credibility of the witnesses and of the weight to be accorded to the evidence received.

In considering the credibility of any witness and the weight to be given to his testimony you should take into consideration his appearance and demeanor upon the stand, his manner of testifying, his apparent candor and frankness or bias, if either be shown, his means of knowledge or observation of the matters concerning which he has testified, the probability or improbability of the story which he relates, and his interest, if any, in the event of this action.

Instruction No. 8

A person accused of crime is presumed to be innocent. This presumption is not a matter of form merely which the jury may disregard at pleasure, but continues thruout the trial
182 until the same shall have been removed or overcome by proof of guilt beyond a reasonable doubt.

Instruction No. 9

These instructions are given by the Court as a whole and are so to be considered by the jury. Each and every instru'tion is to be considered in connection with all of the other instructions given.

Instruction No. 10

While you have nothing to do with the penalty to be imposed in case you find the defendant guilty you are informed in order to prevent any effect of misconception that the punishment to be imposed in case of conviction is a fine of not less than $250,

nor more than $1,000, or imprisonment in the county jail for not less than 30 days nor more than six months, or by both fine and imprisonment.

Instruction No. 11

If you find that the state has proved to you beyond a reasonable doubt all the elements of instruction No. 1 you will find the defendant guilty of illegal taking of game fish; to wit, salmon; on the other hand, if you find that the state has failed to prove all the elements beyond reasonable doubt you will find the defendant not guilty.

Instruction No. 12

In conclusion let me remind you that each of you have taken a solemn oath that you will well and truly try this case, and a true verdict render upon the evidence on the trial and upon the law as now given you by the Court.

You have nothing whatever to do with the punishment to be inflected in case of a violation of the law. The fact that punishment may follow a conviction cannot be considered
183 by you except insofar and only so far as it may tend to make you careful.

Neither must you allow yourself to be moved in the least by sympathy or influenced by prejudice. The question of guilt or innocence is a question of fact and not a question of prejudice or what the punishment shall be. If, as a matter of fact, from the evidence the defendant is guilty no amount of sympathy will make him innocent. If he is innocent no amount of prejudice will make him guilty. For, regardless of what the penalty may be, regardless of any feeling of sympathy or prejudice, the defendant is upon the evidence, and the evidence alone, either guilty or not guilty. What is the true verdict as shown by the evidence is the one question before you.

Instruction No.—

This being a criminal case it will require your entire number of 12 to return a verdict. When you have retired to your jury room you will select one of your number to act as foreman, whose duty it will be to sign whatever verdict you agree upon.

You will take to the jury room the exhibits which have been admitted in evidence, these instructions, and two forms of verdict. One form of verdict you will use in case you find the defendant Guilty; the other form you will use in case you find the defendant Not Guilty.

(Signed) J. E. STONE, *Judge*.

184 *Defendant's exceptions to instructions*

Mr. SIMMONS. If the Court please, the Jury having withdrawn, the defendant Sampson Tulee, now objects to the Court giving Instruction No. 4 for the following reasons:

1. There is no jurisdiction in this Court nor in the State of Washington over the fishing activities of the Yakima Indians and, in particular, over this defendant, Sampson Tulee, a member of the Yakima tribe of Indians when fishing at Spearfish, the usual and accustomed fishing place as defined by the Yakima Treaty of June 9, 1855 (12 Stat. 951):

"The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as, also, the right of taking fish at all usual and accustomed places in common with the citizens of the territory, and of erecting temporary buildings for curing them."

2. That said Statute, namely Section 5703, Remington's Revised Statutes of the State of Washington, upon which said amended information is based is unconstitutional and void insofar as it attempts to regulate, control, or restrict fishing at Spearfish, Washington, the location set forth in the amended complaint on file herein by the defendant, Sampson Tulee, a member of the Yakima tribe of Indians.

3. By paragraph 2 of Article III of the Treaty of June 9, 1855 (12 Stat. 951) there is allotted to members of the Yakima tribe of Indians and to this defendant, Sampson Tulee as
185 a member of the Yakima Tribe of Indians the perpetual right to take fish in all the streams bordering upon or running through said Reservation as well as at all usual and accustomed places, including Spearfish, Washington, without interference by the State of Washington, or otherwise.

4. The fishing activities of the Yakima Indians at their usual and accustomed fishing places as defined by the treaty of June 9, 1955, which would include Spearfish, Washington, the location named in the amended information on file herein, are exclusively under Federal jurisdiction and not the jurisdiction of the State of Washington.

Defendant excepts to the failure of the Court to give Defendant's proposed instruction No. 1 for the reason that it affirmatively appears from the evidence of the plaintiff, state of Washington, that Sampson Tulee caught and sold salmon at Spearfish, Washington, which was the usual and accustomed fishing place on the Columbia River of the Yakima tribe of Indians as defined in the Yakima Indian treaty of June 9, 1855; that Sampson Tulee was not subject in fishing at said place to the regulatory

laws of the State of Washington, and the verdict, therefore, should have been directed in favor of the defendant.

2. The defendant excepts to the failure of the Court to give defendant's proposed Instruction No. 2 for the identical reasons given and set forth in support of the defendant's exception to the giving by the Court of its instruction No. 4.

After a verdict of Guilty had been returned by the Jury, and after sentence having been pronounced upon the Defendant by the court,

186 *Notice of appeal*

Mr. DRIVER. We appreciate the leniency of the Court, and the defendant at this time gives oral notice of appeal in open court to the Supreme Court of the State of Washington from the judgment and sentence rendered by this Court.

Judge STONE. The clerk will note the giving of notice to appeal in open court.

187 [Reporter's certificate to foregoing transcript omitted in printing.]

188 In Superior Court of Klickitat County

Judge's certificate to statement of facts

I, J. E. Stone, Judge of the Superior Court of the State of Washington, in and for Klickitat County, and the Judge before whom the above entitled action was tried, do hereby certify:

That the matters and proceedings embodied in the foregoing Statement of Facts are matters and proceedings occurring in said cause and the same are hereby made a part of the record therein.

That the above and foregoing Statement of Facts contains all the material facts, matters, and proceedings heretofore occurring in said cause and not already a part of the record therein, and contains all the evidence, oral and in writing, therein.

That the above and foregoing Statement of Facts was duly and regularly filed with the clerk of said court and thereafter duly and regularly served within the time authorized by law.

That no amendments were proposed to said Statement of Facts excepting such as are embodied therein.

That due and regular notice of application to the Court for settlement and certification of said Statements of Facts was made and served upon the plaintiff, which notice specified the place and time (not less than three days or more than ten days after

the service of said notice) to settle and certify said statement of facts.

That the exhibits referred to in said Statement of Facts are directed to be, and hereby are, made a part of said Statement of Facts.

Dated this 5 day of June 1940.

J. E. STONE, *Judge.*

190 *Defendant's Exhibit 2*

[Copy]

COUNCIL GROUND, CAMP STEVENS,
Walla Walla Valley, W. T., June 14, 1855.

Hon. GEO. W. MANYPENNY,
Commissioner of Indian Affairs, Washington, D. C.

SIR: I have the honor herewith to inclose a Treaty which I concluded on Saturday June 9th with the Tribes constituting the Yakama Nation and a copy of the official proceedings duly certified to by the Secretary.

By the Treaty sixteen thousand nine hundred and twenty square miles of Territory have been ceded to the United States, and one thousand two hundred and thirty-three square miles held in the two reservations provided for in the Treaty. The population of the Nation is estimated at Two thousand souls as per following table, though it is believed that careful census will show a larger number. ——— ——— run up to nearly Twenty-five hundred.

ESTIMATED POPULATION OF THE YAKAMA NATION

	Estimate
Pischouse	254
Yakamas	500
Palouses	500
	Actually enumerated
Band opposite to and above mouth of John Day's river	60
Band opposite to John Day's river	100
Band opposite to Dalles	370
Band opposite to DesChutes river	120
Clikatats on Clikatat river	60
Band on White Salmon river	36
Total population:	2,000

The report of the Superintendents of Washington and Oregon in relation to the joint Treaties with the Nes Perses, Walla Wallas, Cayuses, and Umatillas, referred to the fact that the Tribes of the Yakama Nation were brought into the same council with them; and that the final arrangements were made in a separate and special council. It is a questionable matter whether the Tribes could all have been consolidated in a council held in their own country, and

though the negotiations were protracted the presence of the principal chiefs of the Nation and especially the great authority of Kam-ai-a-kun, the Head Chief, exerted a powerful influence in promoting the general result. The concurrence of the several tribes in establishing the Nation is universal, and in effecting treaties hereafter, every effort will be made to incorporate with the Nation on the same reservation, the OaKinakanes and perhaps the Colvilles on the north and the bands of the Columbia river between those on the White Salmon and Cowlitz rivers, numbering in all some twelve hundred souls.

The large reserve selected is in every respect adapted to an Indian reservation. It is separated from a fine region of country on the Columbia river by a series of divides extending from the Yakima River to the Cascades. It is off from the waggon route to the Sound over the Cascades—It backs up against the Cascades, affording a fine range for roots, berries, and game. It has almost inexhaustible Salmon fisheries. The reserve furnishes excellent land for farms, abundance of pine for buildings, good sites for mills, and large ranges for horses and cattle through the entire year,

191 For further details in regard to this Treaty and the proceedings in effecting it, I will respectfully refer you to the Treaty itself, the enclosed copy of the official proceedings, and the copy of the proceedings of the joint council transmitted with the joint report of the Washington and Oregon Superintendents.

I have assigned sub-agent A. J. Bolon to the charge of the Indian parties to this Treaty. No objections were made to him by the chief of the Yakama Nation and by the missionaries. Father Pendosy of the Yakama Mission was present by invitation at the council. The charges against Mr. Bolon may be regarded as abandoned. I have to report that Mr. Bolon has shown a most commendable spirit in the discharge of his duties and that he is a faithful and efficient agent.

A map of the country ceded and of the reservation accompanies this report.

I am, Sir, very respectfully your most obedient.

(Sgd) Isaac I. Stevens,
Gov. & Supt., W. T.

I. I. Stevens, Gov. & Supt. June 14, 1855. Enclosing Treaty with Yakima Indians concluded June 9, '55, with the Yakimas. estimate of numbers confederation of Oakinakanes & Colvilles. Description of recent charges against Mr. Bolon sub-agent, considered abandoned. Map of country ceded & the reservations enclosed. Recd. August 27, '55. Ackd. Sept. 3, '55. Rept. to Secy. Int. July 9, '56.

192 Official Proceedings at the Council, held at the Council Ground in the Walla Walla Valley with the Yakama Nation of Indians, and which resulted in the conclusion of a Treaty on the 9th day of June 1855.

May 28th, 1855

A' 11 a. m. Kamaiakun, Owhi, & Skloom, Yakama Chiefs came to the Council Ground; they had been greatly delayed on the road by continued heavy rains and consequent high water in the streams. But few of their people accompanied them as it is the season for digging Roots and catching Salmon. The Yakamas were also accompanied by Delegates from the Pahawnwappam, Pisquose, Wenatshappam, and Palouse Indians, all Tribes or Bands acknowledging Kanmikun as their Head Chief, and there were present Representatives from the Bands living on the Columbia River down to the White Salmon River.

Gov. Stevens addressed them briefly, welcoming them; offering them provisions as his friends and guests; and inviting them to meet tomorrow in Council at this place and hear what the Commissioners wished to say to all the Indians in this Country.

The next day the 29th the Yakama Chiefs attended at the Council, and listened to an explanation of the objects had in view by the Government in proposing to Treat with them. They continued to attend from day to day and Gov. Stevens stated to them fully the terms of the Treaty he proposed to conclude with them; the amount to be paid for their lands and the manner of payment; the Extent of the Reservation to be set apart for them and that upon the Reservation he wished to place the Yakamas, the Colvilles, the Pisquose, & Oakinakanes and the Bands on the Columbia River below the Mouth of the Umatilla as low down as the mouth of the Cowlitz River; The Yakama Chiefs made no reply to these propositions until the 8th day of June when upon the request of Gov. Stevens that he would speak his mind, Kamaiakun spoke briefly saying, in effect, that many of his people had left their country, some gone to the Caloopooyer Country, some to Nisqually and some to the Taih. He wished the Americans to settle in his country on the Waggon Road. He spoke for his people not for himself alone. He wished no Goods for himself. He was tired talking and waiting here and wished to get back to his Garden.

Skloom and Owhi spoke but only in a general manner, and the Council adjourned, it being understood that the Yakama Chiefs had determined to return home the next day.

In the evening Gov. Stevens had a lengthy interview with Skloom which did not result in anything conclusive: but in the

morning, June 9th, at an early hour Kamaiakun visited Gov. Stevens and announced his determination to return home that day; Gov. Stevens endeavored to convince him that it was better to reflect well upon the course he, the Head Chief of his Nation, was about to pursue; whether it would result in good or Evil to his people and advised him to remain until the conclusion of the Council with the Nes Perces and others, and try to make up his mind to a Treaty which would certainly be beneficial to his people.

Kamaikun said he was tired of hearing so much talking; he himself did not wish to talk; Why did not Owhi and Skloom speak? He Kamaikun did not wish to be Head Chief, but, since they all said he must talk; must be the Chief; well, let it be so; He would now speak: He would make the Treaty proposed; he liked the Reservation and wished to collect there all his people; they were much scattered, as he had before said, and he desired to have them sent home. He then gave a statement of the Indian Tribes and Bands who considered him their head Chief, viz: The Yakamas proper, the Palouse, Pisquose, Okinakanes and Methows, the Pshawnwappam and all the Bands on the Columbia River below the Umatilla as far as the White Salmon River and these he would undertake to govern; He was satisfied with the Reservation in his country, but desired a small piece of land at the place called Wenatshapam—where the Indians take many fish—for the Pisquouse & Methows. He wished the papers written so that
193 he might sign them today and go home. This was all.

During the interview several Head men of the Palouse, Pisquouse, & Methows were present and unanimously assented to Kamaikun's decision.

Kamaikun was present at the General Council during the day but did not speak; and in the evening immediately after the adjournment of the Council, he called upon Gov. Stevens for the Treaty and signed it; Owhi and Skloom did the same, as also the Palouse Chief Kahlatoose, and all the Chiefs present, named by Kamaiakun as being under his jurisdiction. Several Chiefs of the Bands at Dalles and above, who were in attendance during the first days of the Council, had returned home to catch their usual supply of Salmon, these, Kamaiakun said, as also all that he had named would sign the Treaty whenever it was presented to them if Gov. Stevens thought it necessary.

The Treaty was then duly witnessed and the Council with the Yakamas declared adjourned sine dei.

On Monday the 11th. The goods, presents for the Yakamas were portioned out and Kamaikun although he would not take any goods for himself superintended the division among his people.

Kamaikun said he had never taken goods from the whites as presents; he did not wish them now but when the Treaty was

pronounced good by the President then he would live on the Yakama Reservation and accept his share of the annuities and other payments.

The Chiefs were entertained at Gov. Stevens Table and throughout their stay here appeared to have the most friendly feelings towards the whites.

Towards evening, Kamaikun, Owhi, and Skloom and their people started on their return to the Yakama Valley.

I hereby certify the above to be a true record of the proceedings at the Yakama Council.

(Sgd:) JAMES DOTY,
Secty. Treaties, W. T.

Approved and for further detail, see record of the Joint Treaty Official Proceedings.

(Sgd.) ISAAC I. STEVENS,
Gov. & Supt. Ind. Affairs, Washington Terrty.

194 COUNCIL GROUNDS, CAMP STEVENS,
Walla Walla Valley, June 13th, 1855.

Hon. GEO. W. MANYPENNY,
Commissioner Indian Affairs, Washington, D. C.

SIR: We as joint commissioners have made treaties with the tribes common to the two Territories of Washington and Oregon, of which we are respectively the Superintendents, and herewith have the honor to enclose the Treaties and the record of the official proceedings.

The tribes with whom treaties have thus been made, are the Nes Perses, Walla Wallas, Cayuses, and Umatillas, of whom 2,650 are estimated to be in Washington Territory and 1,350 in Oregon as per following table.

	Washington	*Oregon*
Nes Perses	1,950	550
Walla Wallas	550	250
Cayuses	150	350
Umatillas	--	200
	2,650	1,350

The lands ceded by these Tribes are as follows:

	Washington, sq. miles	*Oregon, sq. miles*	*Total sq. miles*
Nes Perses	12,320	11,818	24,138
Walla Walla, Cayuses, & Umatillas	2,908	3,362	6,270
Total	15,228	15,180	30,408

The Indians have been placed on two Reservations. The Nes Perses in their own country and mostly in the Territory of

Washington and the remaining Tribes on a single Reservation in Oregon. Separate Treaties have accordingly been made with the Nes Perses, and with the confederated tribes and bands of the Walla Wallas, Cayuses, and Umatillas.

The reserves of these two Treaties are as follows:

Nes Perses	5,122
Walla Wallas, Cayuses, & Umatillas	800°
Total estimate of country included in reservations	5,922

All the above numbers and estimates may be corrected hereafter, in taking a census of the Indians in their own country, and locating and surveying the reservations. The census of the Nes Perses has been furnished by the chiefs of the several bands. They have 2,133 persons at home, 1,670 in Washington and 463 in Oregon, and they estimate 300 to 500 at Buffalo. (We have assumed 357 at Buffalo.) 87 from Oregon and 280 from Washington. The Census will be taken by Looking Glass on his return thither.

The reservations may seem to be large, especially that of the Nes Perses tribe.

All these tribes own large bands of horses and cattle and have small farms.

The Nes Perses country is well described by Lawyer in his speech in council as poor and barren, and with the provision that other tribes not exceeding the aggregate number of the Spokanes, Walla Wallas, Cayuses, and Umatillas may be placed upon the reservation, it is not believed it can be objected to. The Nes Perses own some 15,000 horses and cattle and the Cayuses, Walla Wallas, and Umatillas some 20,000.

The Cayuse reservation is decidedly limited and is simply adequate to their wants.

195 The initial proceedings in collecting the Indians were taken by the Superintendent of Washington Territory who in January despatched Mr. Doty to the Indian Territory who purpose. On learning from Mr. Doty that there was a probability that treaties could be effected the Superintendent of Oregon was invited to join in the operations as a joint commissioner and at a meeting at Vancouver on the 4th April the arrangements were made for their joint action and on the 7th of April the 20th day of May was fixed upon for opening the Council. Instructions were given accordingly to the proper Indian officers.

A copy of the official journal of the Superintendent of Washington will give somewhere in detail the operations of Mr. Doty the Sec'ty of the Washington Superintendent in establishing the camp for the Treaty and in collecting the Indians. The information has already been partially communicated officially to the

department. The Supt. of Oregon despatched Agent Thompson to the Indian country, who also gave notice to the chiefs of the Walla Wallas, Cayuses, and Umatillas and conferred with Mr. Doty on the Council ground.

In the general operations of the commissioners the Indians of the Yakama Nation and those of Oregon below the Umatillas were also assembled at the Council Ground to embrace the largest possible field, and to promote the great ends of peace and friendship between the different tribes, the Supt. of Washington deemed it best to commence the negotiations with the Yakamas in open council with the Tribes common to the two Territories to which arrangement the Sup't of Oregon assented. They were consummated in a separate and special council.

The commissioners deemed it their duty on reaching the Dalles to make a requisition on Major Hains to despatch a military force to the Council ground. A copy of their letter to him is herewith enclosed, which sets forth the reasons for their action. It is due to Pee-opee-mox-a-mox the Walla Walla Cheif to state that on receiving from Mr. Doty information of the turbulent conduct of five young men of the Cayuse Tribe and a request that he as the only real cheif in the valley should restrain them, he executed his authority immediately, and no further trouble was given by them. These five young men had previously much annoyed the settlers, entering their houses in a threatening manner, breaking down their enclosures and indicating a bad spirit.

The Commissioners reached the Treaty Ground on the 21st May, the Nes Perses on the 23rd May, the Cayuses on the 25th, the Walla Wallas and the Yakamas on the 27th and the council was opened on the 29th of May.

At the time of opening the council the Cayuses, Walla Wallas, and Yakamas refused both tobacco and provisions as did the Salmon band of the Nes Perses tribe.

The official journal will show the peculiar phases of the negotiations, and the complete concurrence of all the Indians in the arrangements finally agreed upon.

Looking Glass a prominent Nes Perses cheif reached the council ground on the 9th of May, seven days from the St. Marys Valley, and on Saturday endeavored by a bold stroke to depose Lawyer the Head Cheif, assume authority in his stead and dictate other terms. The council was adjourned, the Tribe refused to recognize his authority and on yesterday Looking Glass signed the Treaty next to the Head Cheif entirely satisfied with the terms. The Cayuses whom the unexpected course of Looking Glass had encouraged to resisting their positive agreement with equal cheerfulness signed the Treaty.

Thus has ended a most difficult and protracted negotiation. The council ground was in the Cayuse country near the place consecrated by the blood of the missionary Dr. Whitman and his family who were killed in 1847 by the Indians of the Cayuse tribe.

196 Its effects on the peace of the country hardly admits of exaggeration. Had no Treaty been effected there would probably have been blood shed and open war the present year. Its effect upon the Snakes will be great and it will have a large expenditure in consequence, in the military operation of the present year to chastise that tribe for its atrosities last season.

The official proceedings will show the effects made to place all the Indians of the joint Treaties on one reservation. To effect treaties the com'issioners had no alternative then to agree to two Reservations. It was deemed due both to the Indians and settlers that the provision for a waggon road should be inserted in the joint treaty providing for a reservation in Oregon.

The official journal is so full that no further elaboration of the matter seems called for in this communication. a map is enclosed showing the country ceded and the lands reserved.

In regard to administration, the commissioners are of opinion that from the present time it would be impolitic to have the Indians of the same Tribe under two jurisdictions, accordingly we have made arrangements from this time that the Nes Perses shall be under the jurisdiction of the Sup't of Washington and the Walla Wallas, Cayuses under that of the Sup't of Oregon.

Each Superintendent will accordingly at the proper time furnish the necessary information to the Department in all matters appertaining to the execution of the Treaty and the future government of the Tribes.

The reservations will be particularly examined and reported upon to the Department.

We are Very Respectfully Your Obedient Servants,

ISAAC I. STEVENS,
Governor & Supt. Indian Affairs,
Washington Territory.

JOEL PALMER,
Superintendent Indian Affairs,
Oregon Territory.

197 GOV. OF WASHINGTON, JOEL PALMER, WALLA WALLA VALLEY. JUNE 12, '55

Transmits treaties made by them with the Nes Perses, Walla Wallas, Cayuses, and Umatillas—Copy of proceedings at the Council, and of preliminary proceedings, also of their requisition for troops.

Rec'd. August 27, '55. Acknd. September 3, '55 to Supt. P. & Gov. S. Report to Sec'y Int. July 9, —. C. W.

198 A true copy of the Record of the official proceedings at the Council in the Walla Walla Valley, held jointly by Isaac I. Stevens, Gov. & Supt., W. T. and Joel Palmer, Supt. Indian Affairs, O. T., on the part of the United States with the Tribes of Indians named in the Treaties made at that Council, June 9th and 11th, 1855.

199 PROCEEDINGS AT INDIAN TREATIES IN WASHINGTON TERRITORY EAST OF THE CASCADE MOUNTAINS

Programme of operations at the Walla Walla Council decided upon by the Commissioners, Gov., Isaac I. Stevens and Superintendent Joel Palmer, May 22nd, A. D. 1855:

Present—Indians common to both Territories, Oregon and Washington, viz Nez Perses, Cayuse and Walla Walla. Tribes in Oregon from the western boundary of the Snake Tribe to the Cascades of the Columbia. Tribes in Washington from the Bitter Root to the Cascades, except the Spokanes, Coeur D'alense, Colville, and Pend D'Oreilles.

Gov. Stevens and Gen'l Palmer, Superintendents of Washington and Oregon, to act jointly for the Nes Perses, Walla Wallas, and Cayuse, common to the two Territories. To agree upon the terms of treaty. To sign jointly. Each acting for the Indians the above tribes in his own jurisdiction.

Gen'l Palmer sole commissioner for the Oregon Indians proper present at the council. Gov. Stevens, sole commissioner for the Washington Territory Indians proper present at the council.

Gov. Stevens to preside at the council.

The proceedings to be carefully recorded for the Tribes common to the two Territories separately by the Secty. of Gov. Stevens and the Secty. of Gen'l Palmer.

The two records to be carefully compared and certified jointly by the commissioners.

Each commissioner to appoint an agent and commi'sary.

Gov. Stevens for the Washington Nes Perses, Cayuses, and Walla Wallas.

Gen'l Palmer for the Oregon Nes Perses, Cayuses, and Walla Wallas.

Goods and provisions to be distributed to the Nes Perses, Cayuses, and Walla Wallas, by the Superintendents in proportion to the Indians under the jurisdiction of each.

OFFICERS OF THE JOINT TREATY

Gov. Stevens, Gen'l Palmer, Commissioners.
James Leoty, Sect'y for Washington Territory.
Wm. McCoy, Sect'y for Oregon Territory.
H. A. Crosbie, Commissary for Washington Territory.
C. Olney, Commissary for Oregon Territory.
Agent R. F. Lansdale, in charge of Washington Nes Perses, Cayuses, and Walla Wallas.
Agent R. R. Thompson, in charge of Oregon Nes Perses, Cayuses, and Walla Wallas.
Wm. Craig, Interpreter, Washington Territory.
N. Raymond, Interpreter, Washington Territory.
——— Leaufohor, interpreter, Oregon Territory.
John Flette, interpreter, Oregon Territory.

CENSUS OF THE NES PERSES, CAYUSES, AND WALLA WALLAS

	Washington Ter'ty	*Oregon Ter'ty*	*Total*
Nes Perses	1,400	400	1,800
Cayuses	150	350	500
Walla Wallas including Utillas	600	200	800
	2,150	950	3,100

This census to be revised on the Indians reaching the ground.

200 A public table for the prominent cheifs under charge of agents Landsdale, Thompson, and Bolon.

Gov. Stevens details Palmer and F. Genitto.
Sup't Palmer also details one or two men.
Coll. Crosbie to take personal charge of issues for public table, of issues of provisions to Indian tribes, and goods distributed. Provisions and goods to be turned over to the agents, and issued under their direction.

May 28th, Monday

Agent Bolon with an interpreter went to meet the Yakamas who are supposed to be near at hand, and returned at 10 a. m. having seen Cam-i-ah-kun and also the Cheif Pee-o-pee-mox-a-mox. The latter had said to Mr. Bolon, "that someone had informed him that the cheifs and others in the Commissioners camp had said that he was unfriendly to the whites. That his heart was with the Cayuses whose hearts were bad. He was very sorry to hear this. He had always been friendly to the whites and was so now. He should go today to see the Commissioners, and ask why such things had been said of him."

The Commissioners and Sec'ty Doty visited the Lawyer at his lodge, as he was unable to walk without great difficulty. An old

gun-shot wound received at the Battle of Pierres Hole, having broken open again causing much pain.

The Lawyer explained a map of the Nes Perses country which he had drawn for Gov. Stevens. Several cheifs came in and suddenly U-u-sune-mal-e-can, one of the cheifs, said:

"The Cayuses wish us to go to their camp and hold a council with them and Pee-opee-mox-a-mox.

What have we to say to the Cayuses or Pee-o-pee-mox-a-mox? What are their hearts to us? Did we propose to hold a council with them or ask them for advise? Our hearts are Nes Perses hearts and we know them. We came here to hold a great council with the Great Cheif of the Americans, and we know the straight forward truth to pursue and are alone responsible for our actions. Three Cayuses came last night and spoke to Jim and two other head men urging them to come to a council at the Cayuse camp, to meet Pee-o-pee-mox-a-mox and Cam-i-ah-kun. He did not wish to go; they insisted; then I said to them: You had best say no more. His mind is made up.

What do you come here for and ask these cheifs to come to a council when to the Head Cheif and the rest you say nothing? Have we not told your messenger, yesterday, that our hearts are not Cayuse hearts? Go home; Our chiefs will not go. We have our own people to take care of, they give us enough trouble, and we will not have the Cayuse troubles on our hands. This is my heart."

Lawyer opened a book containing in their own language the advice left to them by their Great Cheif Ellis, and read as follows: Ellis said,

"Whenever the Great Cheif of the Americans shall come into your country to give you laws, accept them. The Walla Wallas heart is a Walla Wallas; a Cayuse heart is a Cayuse; so is a Yakamas heart a Yakamas; a Nes Perses heart is a Nes Perses heart; but they have all received the white law. They are all going straight, yes: While the Nes Perses are going straight, why should they turn aside to follow others who are going straight? Ellis, advice is to accept the white law. I have read it to you to show my heart."

The Commissioners are glad to hear what had been spoken. They knew the Nes Perses were always friendly to the whites. Lewis & Clark had said this and all white men. The Commissioners were friendly to all Indians, and when they come together would tell them so, and show it by what they propose to do. They had no more to say now because when they spoke they wanted all the Indians to hear. The Commissioners then returned to camp.

201 At 11 a. m. Pee-o-pee-mox-a-mox, Can-i-ah-kun, Owhi, Skloom, and a number of Walla Wallas and Yakamas rode into camp, and having shaken hands in the most friendly manner with the Commissioners and agents, seated themselves under the arbor in front of the commissioners tent and indulged in a smoke; using their own tobacco exclusively although other was offered them.

Gov. Stevens then said to them: "My friends, we are glad to see you. We are glad to see all the Indians around here, and what we say to one is the same to all. You will see that what we say to one tribe is spoken to all the tribes. When you are ready to come into council, when the council is opened, we will speak to you of the important business for which you have been called together. We have near to our hearts the prosperity of the Indians and the propositions to be made to you will prove this.

"We shall endeavor to clearly explain the wishes of the Government, in order that you may fully understand them; as it is our desire you should.

"If it is consistent to you we will suggest tomorrow at noon as the time for opening the council. We look upon you as friends, shall so speak to you; as one friend speaks to another, and wish you to reply as such."

Gen'l Palmer said: "I am equally pleased with Gov. Stevens to see you. Many years ago I met you and considered you friends, and I look upon you as the same now, and hope our meeting will prove this to be true.

"We have come to promote peace and happiness among you, leaving behind all that was bad, bringing only that which was good; thus we have but one heart. When you understand this then there will be no difficulty, but we will all work together for the best.

"As all the cheifs are not here we will not speak of important business, but wait until all are present.

"I want to know if the time fixed by Gov. Stevens for opening the council is good, and if you will meet."

Pee-opee-mox-a-mox said: "I want more than one interpreter at the Council, that we may know they translate truly."

Gen'l Palmer said: "You may have anyone who can comprehend what he is told to interpret, and who will suit you. We wish you to understand clearly what is said. Will you designate a interpreter whom you have confidence in?"

The Cheif said: "I do not wish my boys running around the camps of the whites as these young men do " (alluding to some young Nes Perses who were lounging about our camp feeling quite at home as they know themselves to be among friends).

Pee-o-pee-mox-a-mox said: "We have rode over today merely to see the Commissioners."

Gov. Stevens said: "Come and see us as our friends and guests. Cam-i-ah-kun knows that our people have been in his country, and eaten of his food. So of Pee-opee-mox-a-mox and the Nes Perses. We always give food to our friends when they visit us, you have been invited to come and you are welcome to whatever we have.

"We have a public table at which we are glad to have all our friends sit, and share that which hospitality induces us to offer.

"We have provided plenty of food, and have already given beef, corn, and potatoes to those on the ground. They were invited and we wish them to have plenty to eat.

"I was glad to hear that my friend Skloom had been so kind to Mr. Tinkham one of my party who crossed the mountains. He was in want and Skloom gave him provisions and clothing."

The Cheifs then took their leave.

202 PROCEEDINGS AT THE COUNCIL HELD AT CAMP STEVENS WALLA WALLA VALLEY, ON THE 29TH DAY OF MAY 1855

Gov. Stevens, Superintendent of Indian Affairs in Washington Territory, and Gen'l Joel Palmer, Superintendent of Indian Affairs in Oregon Territory, with the following named cheifs, delegates and head men present at the Council, and representing their respective tribes and bands of Indians as below stated.

For the Nes Perses: Lawyer, Joseph, U-u-suns-mal-o-can, James, Timothy, Red Wolfe, Spotted Eagle, Three Feathers, Jason, Jacobs, Cow-pook, Is-coh-tim, Kay-kay-map, Tu-por-lan-its-a-kum, Billy, Toh-teh-molk-e-wot, The Snipe, Bald Eagle, and others.

For the Cayuses: The Young Cheif, Stosolmo, Comaspilo, and others.

For the Walla Wallas: Pee-o-pee-mox-a-mox.

For the Yakamas: Cam-i-ah-kun, Ow-hi, Skloom, Kow-was-say-ie, Si-ry-was, Skin-pah.

For the Palouses: Kah-lat-toose.

For the Spokanes: Garry.

For the Pisquose and Methows.

For the Cak-kin-a-kanos.

On May 29th at 2:02 p. m. the Council opened. Present: the commissioners, officers of Treaties, the Indian agents, and some fifty citizens.

Besides the Indian cheifs already mentioned and some others, about 1,800 Indians, Nes Perses, Cayuses, Walla Wallas, Ya-

kamas; Dalles Indians, and others on the Columbia above were assembled.

After the pipe had been smoked sometime, Gov. Stevens said: My Children: Before entering upon the council we must have good and faithful interpreters. We want men who will state truly and exactly all that is said; we want men that you know to be good men; men that you can trust; we want no others.

We propose as interpreters for the Nes Perses, William Craig, this man [pointing to Mr. Craig], who has lived with you, also McDauphin and Delaware Jim.

For the Cayuses Mr. Posbrom and Mr. Olney.

For the Walla Wallas and Yakamas, John Whitford.

Thus for each language we propose to have two and three interpreters. Now I ask you, do you want others added to the number? Are you satisfied with these men? If you have any others you wish to propose, speak out, for we wish you to be satisfied.

Stackus, a Cayuse said: We know of no others whom we would wish. There may be some words hard for them to make us understand, but we think the arrangement good as it is.

Gov. Stevens said: When you cannot understand what we say to you, stop us and we will repeat it.

203 Each interpreter will now be sworn to be a faithful interpreter.

Gov. Stevens then administered to the interpreters the following oath.

You solemnly swear in the presence of Almighty God, that you will well and truly interpret to the best of your ability what may be said by the Commissioners for the United States holding this council on the one part; and the cheifs and head men of the tribes and bands of Indians here present on the other part. So help you God.

Gov. Stevens then said: My children, the interpreters here have each taken a solemn oath in the presence of Almighty God, to be true and faithful interpreters. I will now read the form of the oath [and it was read as above].

Gov. Stevens continued: My children, I have much to say to you; my brother here, Gen'l Palmer, will have much to say to you. We want you to listen and be comfortable at the same time. We want clear skies, we want the ground to be dry. We will meet to-morrow with a clear sun and the day before us. Then we will open the whole subject, and will see if our hearts and your hearts will not come together.

We have met as friends today, tomorrow we will meet as friends and then enter upon our business. I therefore adjourn the council

till 10 o'clock a. m. tomorrow. The weather is rainy and bad, tomorrow we hope the skies will be clear and you will be able to be present. Should it rain tomorrow we will meet when it clears up.

One word on another point, you have come here by our invitation and are our guests. I have entered, and so has my friend here Gen'l Palmer, many an Indian lodge, and they always gave us to eat and drink. We therefore have brought provisions which we offer to you as a friend to a guest; and we therefore trust you will all feel free to receive the provisions we have brought to furnish you with as our guests.

I propose to the Walla Wallas, Cayuses, and Yakamas that you take two oxen, drive to your camp and slaughter for yourselves.

Young Cheif replied: We have plenty of cattle, they are close to our camp. We have already killed three and have plenty of provisions.

Gov. Stevens said: We are much pleased to hear you are so well provided for, but we have plenty of provisions and you are welcome to them.

Young Cheif replied: We have plenty at present. We do not throw away your offer. If we want any we will come to you.

Gen'l Palmer (to the interpreter): Say to the Yakamas: You have come a long ways. You may not have provisions. If you want any we have them and you are welcome.

Young Cheif said: Cam-i-ah-kun is supplied at our camp.

Gov. Stevens said: There will be no more said today unless you wish to say something.

Young Cheif said: We have nothing to say today; the weather is bad, rainy. We do not throw away your offer; when we are done talking you will know our hearts. We will talk slow not all in one day. No snow falls at this season of the year. There will be time for you to go anywhere you wish.

The council then broke up and nearly all the Indians returned to their camps.

Pee-o-pee-mox-a-mox and Cam-i-ah-kun dined with the Commissioners and remained in their tent sometime smoking in a friendly manner.

Timothy, a Nes Perses cheif acted as crier for his nation and he will also record in their language the full proceedings each day of the council and this will be preserved among the archives of the nation and handed down to future generations.

204 May 30—Wednesday

At 1 o'clock P. M. the Indians began to assemble and at 1¾ P. M. the Council opened. Present same as yesterday.

Gen'l Palmer said: My friends, I am glad to see so many of you here today. Yesterday the council was organized and Interpreters sworn to repeat to you what we say. Today my brother in Council will speak to you the great desire that our Chief has to promote your good.

I know that our Great Chief has a good heart. I know that my brother Gov. Stevens has a good heart, that they both desire to do and act for your good. I hope then you have come here with good hearts to listen to what he has to say. We both come here to talk to you as man and not as boys; we throw behind us everything that is bad, and come to you with one heart; we hope you have done the same. You are men able to judge between good and bad; and when my brother speaks to you, you can judge whether it be good or bad.

For the present I am done, and my brother will speak to you.

Gov. Stevens said: My Children, the sky is clear, the ground is dry, my heart is glad today. Our hearts are glad. You are men. You have families; you have the means to live.

You have all of you been friends to me and mine. Two years since I came among you. Two years only have I known you; I came from the great waters beyond the mountains, across the mountains, and you have all been friends to me.

The Nes Perses, Lawyer fed my men driven out of the mountains by snow; the Cayuses and Walla Wallas received my men kindly; Pee-o-pei-mox-a-mox saw us in his country and gave us guides; the young cheif and his people had nothing but smiles and kindness for us; and yesterday Cam-i-ah-kun showed me a paper from Capt. McClelland saying that he furnished guides and welcomed them on their way.

So to the North and East; there sits a Flat Head and there a Couer D'lane on the route across the Bitter Route; there are Poulouses and Colvilles and Spokanes away to the North; there are also men from both sides of the river, from far down; all were kind, and I brought a message to all, from a tribe beyond the mountains; I have been among the Black-feet and have brought word that they would meet you in Council, and that war should cease.

I met you in the trail, I saw your people in the Buffalo country; I met your people on the road to the Buffalo country. My heart said peace in the Buffalo country, peace here; peace is here now; peace between yourselves, peace between us. So for your kind-

ness to me I am your friend, and I came from the Great Father to be your friend.

The interpreters yesterday took a solemn oath to speak truly. I took a solemn oath and my brother took a solemn oath to be your friends.

The Great Father has learned much of you. He first learned of you from Lewis & Clarke; Pee-o-pee-mox-a-mox remembers Lewis & Clarke, the Lawyer does; they came through your country finding friends and meeting no enemies.

I went back to the Great Father last year to say that you had been good, you had been kind, he must do something for you. My brother wrote to the Great Father in like manner.

He told the Great Father, these men have farms; the Great Father said I want them to have more and larger farms; I told him you had cattle and horses; he answered that he wanted your horses and cattle to increase; I told him some of your grown people could read and write; he answered, I want all the grown people and all the children to learn to read and write; I told him that some of you were handy at trades; he answered, that he desired to give all who choose the means to learn these trades.

Why did the Great Father answer in this way? Why did he send my brother and myself here this day, to say this to you? Becatse you are his children; his red children are as dear to him as his white children; his red children are men, they have hearts, they have sense; they feel kindness; they resent injury; we want kindness on the one side and kindness on the other, we want no injuries to resent.

The Great Father has been for many years caring for his red children across the mountains; there [pointing East] many treaties have been made. Many councils have been held; and there it had been found that with farms and with schools and with shops and with laws the red man could be protected.

Why do I say laws? What has made trouble between the white man and the red man? Did Lewis and Clark make trouble? They came from the Great Father; did I and mine make trouble? No, but the trouble had been made generally by bad white men and the Great Father knows it, hence laws.

The Great Father therefore desires to make arrangements so you can be protected from these bad white men, and so they can be punished for their misdeeds; and the Great Father expects you will treat his white children as he will make a law they shall treat you. We are now in council to see if we can arrange the terms which will carry this into effect.

Let us go back to old times across the mountains and see what was there done. The red man received the white man gladly; but

after a while difficulties arose; the blood of the red man was spilled and the blood of the white man; there was cold; there was hunger; there was death. But a man came, William Penn, and said I will see if my white children and my red children cannot be friends, and they were friends: Wm. Penn and the Indians came together as we now come together; they made a Treaty; there was peace; and no white man's blood and no red man's blood had been shed, and there has been peace to this day; this was in olden times.

Oh! these people said we too will make treaties; we too will live in peace. They tried various plans, a plan that worked well when there were but a few whites, did not work well when there were many. It was found that when the white man and the red man lived together on the same ground, the white man got the advantages and the red man passed away.

The Great Fathers name at that time was Andrew Jackson. He said I will take the red man across a great river into a fine country where I can take care of them; they have been there twenty years; they have their government, they have their schools, they have their own laws; their Cheif John Ross knows as much as my brother or myself and a great deal more; he is what you call a Lawyer; he is an Indian, a Cherokee. When he goes to see the Great Father, the President, he sits with him at table as you sit with us at table.

Before you met my brother and myself in council, you have your own council; and the Great Father when he acts has his council also, he has his cheifs.

When I saw the Great Father he called his cheifs together, and had a council about you. He has two cheifs who have the care of the red men, their names are Gen'l Orr and Robert Johnson, I want you to remember them. Robert Johnson lives near John Ross; they both told me that what had been done for John Ross should be done for you, and more, as I will tell you.

As we grow older we learn more and grow wiser; so of the Great Father and his cheifs; they did much for John Ross and his people twenty years ago; they have learned much since and know better what to do; they find one thing however the same now as then.

206 They gave John Ross and his people a tract of land into which no white man could go without their consent; they sent them an agent, they had schools, they had mills, they had shops, they had teachers, they had doctors, they had farmers. I repeat again, no white man could go there unless the red man consented to it.

North of that tract of land the whites are going in but they cannot enter it. South of that tract of land the whites are going

in but they cannot enter it; that tract of land is the Indians' home; his home and the home of his children.

There are other tracts of land East of the mountains set apart for the red man's home; for there are many tribes. Those tracts the white man cannot enter without the consent of the red man. On all these tracts the red man has schools and farms and mills; they have teachers and physicians and an agent.

Now listen carefully: On these tracts the land was all in common, there were one or more larger fields for the tribes but no man had his special field; the Great Father and his chiefs now think that is not good; the Great Father said, the white man has his farm, his cattle, and his horses; the red man shall have his farm, his cattle, and his horses; the Great Father says that when on that tract of land an Indian has his field, that field should be his.

This brings us now to the question. What shall we do at this council? We want you and ourselves to agree upon tracts of land where you will live; in those tracts of land we want each man who will work to have his own land, his own horses, his own cattle, and his own home for himself and his children. On each tract we want an agent to live who shall be your brother, and who shall protect you from bad white men. I shall speak more on this subject by and by.

On each tract we wish to have one or more schools; we want on each tract one or more blacksmiths; one or more carpenters; one or more farmers; we want you and your children to learn to make ploughs, to learn to make waggons, and everything which you need in your house. We want your women and your daughters to spin, and to weave and to make clothes. We want to do this for a certain number of years.

Then you, the men, will be farmers and mechanics, or you will be doctors and lawyers like white men; your women and your daughters will then teach their children, those who come after them to spin, to weave, to knit, to sew, and all the work of the house and lodges; you will have your own teachers, your own farmers, blacksmiths, wheelwrights, and mechanics; besides this we want on each tract a sawmill and a gristmill.

Now we want you to agree with us to such a state of things. You to have your tract with all these things; the rest to be the Great Father's for his white children.

Besides all these things, these shops, these mills, and these schools which I have mentioned, we must pay you for the land which you give to the Great Father; these schools and mills and shops, are only a portion of the payment. We want besides to agree with you for a fair sum to be given for your lands, to be paid through a term of years as are your schools and your shops.

Now these payments are something you will have to think much about. Whatever is done is done with your free consent; I have more to say about these payments, about the agent, and about your doing better, as I think you will if we can agree.

I am tired of speaking; you are tired of listening. I will speak tomorrow. My brother will now say a few words to you.

Gen'l Palmer said: I shall say but little to you today; it is not expected we can come together with one day's talk; nor do
207 we expect you can understand with what has been said all that we want. You will not make up their mind until you hear all we have to say.

Tomorrow my brother will say something more to you; when he is through then I will speak to you. Sometimes when people have a matter to settle they commence way off; but as they understand each other they come together. With us, if we commenced way off, I hope we are a little nearer now, and by and by I hope we shall come quite together.

As we expect you are tired sitting, and as we do not wish to say too much at once, we will speak no more.

We will meet tomorrow if you like, at an earlier hour, say 10 A. M., and you can come without our sending for you. If any present wish to say anything, we are ready to listen to it.

No reply was made by the Indians and the Council then adjourned at 4½ P. M.

208 May 31st—Thursday

The Indians assembled at 11½ A. M. and at 12 m. the council commenced.

Gov. Stevens said: My children, I said to you yesterday we want you to agree to live on tracts of land, which shall be your own and your children's; we want you to sell the land you do not need to your Great Father; we want you to agree with us upon the payments for these lands; we want you to have schools and mills and shops and farms; we want you to have teachers and millwrights and farmers and artisans; we want your people to learn to read and write; your men and boys to be farmers or millwrights or mechanics, or to be of some profession as a lawyer or a doctor. We want your wives and daughters to learn to spin and to weave and to make clothes and all the labor of the house; this for a number of years as we may agree.

I said yesterday this would only be a part of the payment. We want also for a certain number of years to furnish you with some clothing, clothing for your men, your women, and your children.

I will mention only some of the principal articles; there will be blankets and cloth for leggings, clothes made, shirts, and other articles for the men and boys; there will also be blankets and shawls

and calicos and shirting and other articles for the women and girls. The particular articles, however, will be agreed upon between yourselves each year; you may want certain articles one year, and different articles the next.

Besides clothing we would wish to furnish you with tools and implements for the shops; for the blacksmith, for the wheelwright, for the tinsmith and such other tools as you might need; we also want to provide you with tools for your farms, with ploughs and hoes and shovels and when you get further advanced with reapers and all the implements white man has; we want in your houses plates and cups and brass and tin kettles; frying pans to cook your meat and bake ovens to bake your bread, like white people.

I have told you about the mill to grind wheat and corn, and about the mill to saw boards and lumber, and that we should employ carpenters in your service.

We want you by and by to live in houses and we shall furnish you with a mill to saw lumber, and with carpenters, and your own people by and by will become carpenters and then you will have houses; all this for a term of years. Then we hope that all you people, every family will have its farm, its cattle, its horses, and I trust, its sheep; then I said you will have your own teachers and your own schools; you will have your own smiths, your own wheelwrights, your own carpenters, your own physicians and lawyers, and other learned men.

I told you of John Ross. As your fathers and your friends we think this will be good for you.

In thinking over the matter we want you to bear in mind what you have seen and what you know. That venerable old man Jim recollects when he first saw a house in this country; you all of you recollect when you first saw cattle, now you count your horses and your cattle by thousands.

The horse carries you whither you wish to go, yourself, your wife, your children; and your packs, and he works in your fields; your cattle now furnish you with a portion of your food; your cows furnish you with milk and you already know how to make butter; we trust that you will make butter and cheese; and that your women will all have churns. Formerly you raised no wheat, no potatoes. Now you have both grain and vegetables. Is not this a great change? A change which you all have seen. Has it not been for your good?

Let us look at it now in a different way. My brother said yesterday he would have much to say today.

209 We do not want you to agree not to get roots and berries, and not to go off to the Buffalo; we want you to have your roots and to get your berries, and to kill your game; we want you if you wish to mount your horses and go to the Buffalo plains, and

we want more; we want you to have peace there. What has disturbed you on those plains? The Blackfeet tribe of Indians who stole your horses and murdered your grown people and your children; we want that to cease forever.

The Blackfeet are not all bad people; they have some good chiefs among them and some good men; a part of them promised me two years ago not to make war upon you, and those have kept their promise; I could not see all, and those I could not see have since given trouble. But I left with them a man who spent a whole year with them; a man whom you have seen here; a man who writes at that table. He traveled all through their country, sometimes alone, sometimes with two or three men; he saw them all; he talked to them about you, and they promised to meet you in council this year and made a peace with you, to murder no longer your people, to steal no longer your horses.

The Blackfeet have now began to think, if we stop stealing horses from the Indians this side of the mountains, what will become of our bands of horses? They will pass away. Raise your own horses says Mr. Doty as do the Flat Heads, the Nes Perses, the Cayuses, the Walla Wallas, the Coeur D'lanes, the Spokanes, the Yakamas, and so back to the Flat Heads again. The Blackfeet then said, the Buffalo are not as plenty as formerly, we have to eat too many old bulls.

Doty then talked about you, said you had your fields, horses, and cattle, and raised your own milk, meat, and vegetables. The Blackfeet then said we too would like to have farms; we would like to have cattle and milk and bread.

The Blackfeet and other tribes who live in the Buffalo country, see that the Buffalo cannot subsist there forever; they feel that unless they change their mode of life, they will soon pass away.

They desire to change their mode of life. We shall help them provided they agree not to molest you.

When you see the Blackfeet at the Council they will ask you many questions, they will want you to tell them when you first had horses and cattle, and when you first had crops. If we agree at this council they will ask you all about that; and you will tell them you have not as much game as you once had, and the time is coming when you will not have dressed skins for your clothing; you will tell them the Buffalo is passing away, and the time will come when we will not have robes for our tents and lodges; we have already changed and found it for our good, and we are determined to make another change in good season: we have made a bargain with the Great Father: we will have instead of tents of lodge skin when there are no Buffalo, houses of boards and of lumber; when the elk and the deer and the buffalo pass away, then we will have clothing, every man and

woman and child like the white man; we have enough now to do to get roots and game and berries for our children; but we intend then to raise enough for our women and children, when their numbers have increased, and roots and berries and game are no longer to be found.

If we can agree here, this you will be able to say to the Blackfeet, and the Blackfeet will say, we will eat old bulls no longer, we will not starve, we will not die of cold, we will do as you have done, we will be friends, we will chase the Buffalo together on the plains, we will be friends forever.

I have spoken of an agent, I will speak more. If we agree at the council we have many things to do for you; the agent will live with you and see that it is done; if you think we have not done our part go to the agent and tell him so, and he will see that we do do it. If we think you have not done your part the agent will go to the cheifs and say so frankly and arrange it with them; he will be your elder brother, and will see that you are not wronged, and that the bargain is carried out.

I have much more in my heart to say but not now, there will be time enough by and by; my brother Gen'l Palmer has to speak, he is your friend as I am but he has known you longer, and he can speak to you better than myself; he feels for you and you will find that every word which he says comes from a desire to serve you.

If you wish to hear him now he is ready to speak.

Gen'l Palmer said: My friends, I do not wish to tire your patience too long, I have something to say to you, if you will listen a little longer I will speak.

My brother here speaks truly, when he says I desire to speak and act for your good.

In order to explain more fully the course pursued by the government towards the Indians on the other side of the mountains I will tell you of it; my brother here has referred to that subject and I may perhaps have to repeat his words.

He has told you something about our first settlements among the Indians over the mountains; those settlements were made over Three hundred and sixty years ago. First came a cheif with several of his brethren in three ships across the ocean, they found many Indians in that country who received them kindly, they gave to them food and received in return beads and various trinkets; that cheif after traveling over a great extent of country and visiting many villages left part of his people and returned home.

After having been absent some time he returned and many others, upon arriving at the point where he had left his children,

none could be found. After the Cheif left, these people began to quarrel among themselves and with the Indians.

There were many causes for this; a portion of the Indians whose hearts were not good, stole the property belonging to these people; the whites retaliated by whipping and ill treating them. That was the first offense on the part of the Indians; the whites had long been without women and they often took forcibly the women of the Indians; this induced them on their part to retaliate; these difficulties continued from bad to worse until finally there was war; our people were but few, the Indians many; our people were all killed; there were also many Indians killed. Upon seeing our Cheif return with his vessel and other vessels and so many people they fled; they knew that had done wrong as well as the whites, and they expected they would be punished for it; this time our Cheifs bro't with them their women and children and cattle and horses, and tools to work with.

The Indians seeing they were not interfering with them returned and for a while they lived together in peace; but they lived indiscriminately together, a white man here and an Indian there; but they could not long live thus; their customs and mode of life was different, they did not understand each other; they continued a number of years with little difficulties occurring, occasionally killing one another until it finally broke out with another war; peace would sometimes be made and last for a little time, but finally they would get foolish and their hearts would get bad; as it is said in this country sometimes: in this part of the country by the young men they are few, we are many, let us wipe them out.

They finally made war, a council was held, speeches and harangues were made and they declared war, a few white men were killed and many Indians were killed; there were more Indians killed than white men because we had better arms and know how to make them. This war continued some time but finally they had peace; the whites brought with them and made after they arrived here whiskey; this the Indians were very fond of and like all other persons after drinking it were foolish; they quarreled among themselves and killed each other and some whites in their drunken frolics; our cheif saw this condition and desired to do them good; he saw that the Indians and the white man could not live peaceably together: he called the Indians together in council; he proposed as we propose in this council,

to purchase their country and select a place for them to
211 live; he proposed to have a district of country set aside for
the Indians to live in that no white man should live there;
but the Indians said No! why should we leave the bones of our

fathers and go to a strange land; we have plenty of elk, deer, bear, berries, and roots; we like you let us live together, we don't want to cultivate the soil, you are welcome to occupy it; they were told that the wild game, the roots, and the berries would not last always; they said they were a great and numerous people, they knew what was best for them and did not want our counsel; they quit talking, the whites went to their houses and Indians to their lodges; our people continued coming; every year vessels came until our people got as numerous as the leaves on the trees.

It was but a few years before their game was all killed off; for the white man killed the game as well as the Indians; the Indians had no food in his lodges, the women and children were hungry; at last they commenced stealing our peoples property and plundering their houses; our people were forced to retaliate by whipping and shooting some of them. The Indians again sent messengers to the surrounding tribes to call them to make war; they resolved in council to exterminate the whites, kill them off; they commenced by burning houses, murdering women and children, and killed a good many of our people; finally our warriors were collected and they had war; they did not understand our mode of warfare and thousands of Indians were killed and but few of our people were killed in the battles. This continued for a long time and the tribes finally concluded they had been acting foolish, and that they would receive the talk of our cheif.

Those that were left finally agreed to meet our cheif in council; they did so and there was peace. In that council it was agreed by the Indians that they would reside on a certain district, set aside for them certain limits, certain bounds; they agreed in that council to live in peace with the whites, and to commit no depredations on them, and to live at peace with other tribes; our cheif agreed that we would build them mills, blacksmith shops, carpenters shops, and supply them with all necessary fixtures.

Our cheif directed his agents to build those mills and school houses and shops, and he employed teachers and smiths and millers and sent them among them. They supplied them with cattle and horses and oxen and ploughs and waggons and every variety of farming tools.

These Indians then began to see that they had acted very foolish, and that when they supposed they knew enough for them and did not want any of our counsel, they knew nothing, they were as blind men; they have since been learning and continued to learn and prosper, and are now a great happy and good people; there were a few tribes who refused to go into that council, who refused to treat. What was the condition of that people? Those who thought themselves very wise and refused to take the advice

of the white people those who continued to make war upon our people? Their game was all killed, they had nothing to eat, they fled to the mountains then they continued to live but a few years of miserable existence, until they were finally overtaken by more powerful tribes and all killed. There were other tribes in other districts of country, who heeded the advice of the chief and were set aside in districts of country belonging to themselves.

In all cases where they have entered into a treaty and agreed to reside upon tracts set apart for them our chief has aided them. All who have settled upon those tracts have not done well, for they are lazy and have foolishly thrown away what has been paid them.

But you as a people know how to appreciate these advantages and would not throw them away; all experience we have had with Indians these Three hundred and sixty years shows us that the white man and the red man cannot live happily together; 212 although we may live near together there should be a line of distinction drawn so that the Indians may know where his land is and the white man where his land is; you are all able to judge for yourselves by the constant difficulties that are occurring here among you, between the whites and the Indians.

We have some people whose hearts are bad, who violate our laws; we have men who are afraid to live in the settlements, they seek opportunities to go among people at a distance, among the Indians; as an evidence of that I need only refer to matters that have transpired within the past four weeks in your own country; a few men had formed a plot by which they were to get your horses; their plan was this: Part of those men went over into your bands and if they found any horse branded took a description of it, wrote it down in a book; when they had visited all your bands and got the description they would go away. Sometime after they would take their book and give one of their party a description of these horses and an order to get them; when they gather up all these horses they will drive them off to the Grande Ronde or some place in the Blue Mountains; they contemplate when they had got the stray horses coming back and driving all your horses to Salt Lake; but a short time ago Mr. Thompson came up and learned the trick; he went below and took out a warrant for them and these soldiers came up to try and arrest them.

It is these men I am told who would rob you of your property, who are giving you advice not to treat with us; whose counsels do you prefer to take? These men who would rob you, or ours who come to befriend you? These men who came here are strangers to you with smooth tongues, they care nothing about the truth. I don't mean to say that all who come among you are bad men;

I am afraid there are a few of these young men who come to live among you and wish to get your women, not because they desire your women but because they want your horses; they will come and remain among you a few years, get a woman and raise children, but when they get a band of horses around them, they will be off and leave the women and children without anything; I have been told that one of these men has been in your camp since we have been holding this council, advising you to have nothing to do with us; these men you cannot tell always who they are, but all such men need watching; you will now be able to judge who are your friends, such men or myself and my brother who have come here to act for your good.

We have been talking a good while and you have been listening. You are tired sitting. I have more to say to you but I will leave it till tomorrow and say no more at present.

The Council then adjourned at 3½ P. M.

In the evening the Young Cheif sent a message to the Commissioners to the effect that he should be pleased if no council should be held tomorrow, as his people desired to make a great Feast and have a general holiday. To which request the Commissioners acceded.

Lawyer, Pee-o-pee-mox-a-mox, Young Cheif and Cam-i-ah-kun dined at Gov. Stevens table with Gen'l Palmer and the gentlemen of the party.

June 1st—Friday

All about the Treaty Ground was very quiet, all the principal Cheifs dined at Gov. Stevens table.

The day was extremely warm and to have held a council would have been most uncomfortable.

213 June 2nd—Saturday

The Indians began to collect at 11½ A. M. Some delay was occasioned by the nonappearance of Cam-i-ah-kun and Ow-hi. But at 12 M. all the cheifs being present the council opened.

Gen'l Palmer said: My friends, we have met here today to continue the talk; I shall try and speak so that you may understand me.

I have said that the white man and the Indians could not long live together in peace, a few may do so, but where there are many we cannot do it. If your Cheifs are unable to restrain your people where there are but few, how can our Cheif prevent his people from doing wrong when they are so many and scattered over so large an extend of country.

It is but fifty years since the first white man came among you, those were Lewis and Clark who came down the Big River—the

Columbia. Next came Mr. Hunt and his party, then came the Hudson Bay Co. who were traders. Next came missionaries; these were followed by emegrants with waggons across the plains; and now we have a good many settlers in the country below you.

If there were no other whites coming into the country we might get along in peace: You may ask, why do they come? Can you stop the waters of the Columbia river from flowing on its course? Can you prevent the wind from blowing? Can you prevent the rain from falling? Can you prevent the whites from coming? You are answered No! Like the grasshoppers on the plains; some years there will be more come than others, you cannot stop them. Our chief cannot stop them, we cannot stop them; they say this land was not made for you alone, the air that we breathe, the water that we drink, was made for all. The fish that come up the rivers, and the beasts that roam through the forests and the plains, and the fowls of the air, were alike made for the white man and the red man.

Who can say that this is mine and that is yours? The white man will come to enjoy these blessings with you; what shall we do to protect you and preserve peace? There are but few whites here now, there will be many, let us like wise men, act so as to prevent trouble.

And now while there is room to select for you a home where there are no white men living let us do so. I have made treaties with all the Indians tribes in the Willamette Valley, with all in the Umqua Valley, with all in the Rogue River and Shasta country; they have agreed to remove to such tracts as shall be selected for them; they have agreed to be friendly with the whites and all other Indians; they have sold us all their country except the reservations; we have agreed to build them mills, blacksmith shops, waggonmakers shop, to erect a tin shop and gun smith shop, to build a school house and hospital, to employ millers, mechanics, school teachers, doctors, and farmers, all these expenses to be paid by the government for twenty years.

Do you want these things? Do you want a saw mill to saw the timber to build your house? You have a few lodges now, how long will they last? by and by where will you get your hides to make lodges? Gov. Stevens told you that the Blackfeet said the Buffalo were not as plenty as they were once; it is but a few years since there were a plenty of Buffalo at Fort Hall. Mr. Craig here has seen many of them there and probably others of you have; where are they now? all gone;

Do you want mills to grind your wheat and your corn? Do you want blacksmiths to make your ploughs and harrows? To make your axes, hatchets, hoes, knives, and to shoe your

214 horses? Do you want a gun-smith to mend your guns when broken? Do you want a tinner to mend your kittles, your pans, and cups? Do you want a carpenter to build your houses and a waggon maker to make your waggons? Do you want a shoe maker to make your boots & shoes? Do you want a doctor to attend to the sick and give them proper medicines? Do you want farmers to assist you and show you how to raise wheat, corn, and potatoes? Do you want school teachers to teach your children how to read and write? Is it not good that these men can write down what is said here and understand what it is? It would make my heart glad if you could all do so. It would make my brother's heart glad if you could all do so; would it not be good if you wanted to talk with my brother, or if you wanted to talk with our Great Chief? If you knew how to write and wanted to talk you could send it to him on paper and he would know your heart; would it not be good then to have schools among you?

Do you want to have plenty of provisions for your women and children? Do you want to have plenty of blankets and clothing? The deer skin and the elk skin cannot always be had to make your clothing; do you always want to live at peace with all persons? If you want all these things we are ready to give them to you; when we know your hearts then we shall know whether you want these things or not.

You have often been told that by and by our Great Cheif would send some person to buy your country. I suppose you have been looking for that person a long time; Dr. White came here. What did he do? He may have talked very well to you but what use? Mr. Wampool came, what did he do for you? My brother and myself have come, we have not only come to talk but to do something. Will you receive it or will you throw it behind you? We did not come here to scare you or to drive you away, but we came here to talk to you like men, and to make such arrangements as to preserve peace and protect you. Our agents have tried to protect you in all your rights; but I am fearful they will not always be able to do so, if you continue to live in this scattered condition. I see here a good many old people. I expect you have left a good many of your old people at home; we want to do them some good while they yet live, and if you enter into a treaty with us we can then do them some good and do you all good; if we enter into a treaty now we can select a good country for you; but if we wait till the country is filled up with whites, where will we find such a place? My heart is that it is better for you to enter into a treaty now with us. I know that my brother has a good heart and wants to do you good, but we do not know how long we can

act for you. Perhaps it may not be long before other agents will come; the next that come may not have such good hearts and do as much for you as we will.

If we make a treaty with you and our Great Cheif and his council approves it, you can rely on all its provisions being carried out strictly. My heart is that it is wise for you to do so. I will not speak any longer.

Gov. Stevens said: My Children, my brother and myself have opened our hearts to you, we want you to open your hearts to us.

Five Crows said: We are tired.

Gen'l Palmer said: We are not expecting to say any more today.

Five Crows said: I have a little to say. Do you speak true that you call me brother? We have but one Father in Heaven; it is He [pointing above] who has made all the earth; He made us of earth on this earth; He made our Fathers; when he gave us this earth. He gave no gardens.

215 He created our Fathers when he created Adam; we were divided into different countries; It was He, the Almighty, that passed the law; He is the same God that made the Ten Commandments; He said my Children you must do no evil; you must not steal, you shall not take anything without payment; the Great Father says he will send the theif into fire—into hell——

The Commissioners said will you speak now or on Monday?

Pee-o-pee-mox-a-mox said: Why not speak tomorrow as well as today? We have listened to all you have to say, and we desire you should listen when any Indian speaks. It appears that Craig knows the hearts of his people, that the whole has been prearranged in the hearts of the Indians; that he wants an answer immediately without giving them time to think; that the Indians have had nothing to say so far it would appear that we have no cheif.

I know the value of your speech from having experienced the same in California, having seen treaties there. We have not seen in a true light the object of your speeches; as if there was a post set between us, as if my heart cried from what you have said; as if the Almighty came down upon us here this day; as if He would say, What are you saying? Look at yourselves your flesh is white mine is different, mine looks poor; our languages are different. If you would speak straight then I would think you spoke well; we have come together to speak about the earth and not of God; you were not afraid of the Devil!

You see this earth that we are sitting on; this country is small in all directions. Why should you fear to speak on Sunday? Should I speak to you of things that have been long ago as you have done? The whites made me do what they pleased, they told me to do this and that and I did it; they used to make our women to smoke; I suppose then they did what was right; when they told

me to dance with all these motions that are here then I danced. From that time all the Indians became proud, and called themselves cheifs.

On another subject I have something else to say. Now how are we here as a post? From what you have said I think you intend to win our country, or how is it to be? In one day the Americans become as numerous as the grass; this I learned in California; I know that is not right. You have spoken in a round about way; speak straight. I have ears to hear you and here is my heart. Suppose you show me goods shall I run up and take them? That is the way we are, we Indians, as you know us. Goods and the Earth are not equal; goods are for using on the Earth. I do not know where they have given lands for goods.

We require time to think, quietly, slowly. I see Americans in all countries, it is not the country to think about, we may think about another; there is the Mission [Catholic Mission] it is right there and it is right it should be there. You have spoken in a manner partly tending to Evil. Speak plain to us, I am a poor Indian, show me charity; if there was a cheif among the Nes-Perses or Cayuses, if they saw evil done they would put a stop to it and all would be quiet; Such cheifs I hope Gov. Stevens and Gen'l Palmer are. I should feel very much ashamed if the Americans should do anything wrong. I had but a little to say, that is all. I do not wish you to reply today; think over what I have said.

Com-os-pi-to- said in substance as follows, it was addressed to his people and rendered by the Interpreters after the conclusion of his speech.

He reproved the young men for laughing and talking; said they considered him of no account any longer; they had knocked off his horns and his teeth were worn out; once he had horns and he could hook; teeth and they were sharp and he could bite; you young men think yourselves very smart by and by you will learn; now I am tired of your conduct; I am not speaking to Gov.
216 Stevens or Gen'l Palmer, I am speaking to you young men, as my children, to listen and behave yourselves.

Gov. Stevens said: We are ready to hear, my friends anything you have to say today. If you desire not to speak today the council will adjourn till Monday. We do not wish to speak on Sunday because our Great Cheif does not want us to do business on that day, unless it is a matter of necessity. We think that most of our red brethren do not wish to do business on Sunday. The Council is adjourned till Monday at 10 A. M. And the Indians then dispersed at 3 P. M.

June 4th at 12½ P. M. the Indians began to collect and 1½ P. M. the council opened.

Gov. Stevens said: Pee-o-pee-mox-a-mox said on Saturday, he had listened patiently to all we had said, and hoped we would listen patiently when any Indian spoke. We listened patiently on Saturday, we shall listen patiently today; we want you to open your hearts and speak freely.

After a long pause the Lawyer said. If you will designate some one to speak first he will speak. If you do not they will sit here all day without speaking.

Gov. Stevens said: We expect the Head Cheifs know the hearts of their people. We will be glad to hear the Lawyer speak.

The Lawyer said: My Cheifs and people, I will not speak, listen (to Commissioners). I ask good for these poor people; I think my cheif about what you have been speaking; it is from the man that made us, My Cheif, or is it from your own people? That is the reason of my asking, where is it from you have spoken My Cheif? Although I think it is from the white people; from where the white people is they have been dying and dying, and are yet dying, and also the whites are living all from the same people. The same thing of our people our red people that are younger and from the same root; and here you see these many of us yet and still living, old men and children.

The Supreme Being our maker listens to the white people who are dead and also to those who are living; the same thing with the red people, they listen to the dead and also the living.

And this what the President has made up his mind for us poor people; he has thought we were a poor people and says go and see them and learn them straight; and that is the reason you have told them you would learn them to read and write and all those other things you have spoken of; and that is the reason I have understood what you have spoken from the President; for that reason you have been asking us questions, and now we are asking questions from you.

It was not for nothing I have been listening to you. My country is poor; it is a trifling country. You see the map the marks of our country, one stream runs one way another runs another way, it is all rock. My Cheif, but the Big Cheif from the light, (the East) said to you go and talk to these people and you have done it, he says go there to take care of your white people and your red people and you have done it. As long as the Earth stands take care of the people; he said to the white people and the red people all as one let us listen to the laws, when the earth is done away with there is the end of the law, and that is the reason you see us good and we see you good.

My Cheif that is all I have to say at the present, there are a good many men here who wish to speak. Let them speak.

217 The Commissioners requested Pe-at-tan-at-tee-miner to speak, who replies. You have heard what I have to say. My mind is the same as the Lawyer has spoken. What I have to say he has said; he has spoken my mind, I have nothing to say, he has said it all, for my land it is for your and for me. I shall do you no wrong and you do me none, both our rights shall be protected forever; it is not for ourselves here that we are talking, it is for those that come that we are speaking. That is all I have to say at this present time.

Cam-i-ah-kun was invited to speak and said, I have something different to say than the others have said. It is young men who have spoken; I have been afraid of the white man, their doings are different from ours. Your cheifs are good, perhaps you have spoken straight, that your children will do what is right, let them do as they have promised. This is all I have to say.

Pee-o-pee-mox-a-mox was next invited and said I do not wish to speak. I leave it to the old men.

Gen'l Palmer said: We do not know who of them desire to speak; let their old men speak if they desire to do so.

Gov. Stevens said: If U-u-Sin-mull-e-cun would like to speak we would be glad to hear him. He replied. I do not wish to speak now let those how have already spoken speak. What the Lawyer has said is my heart, it is not necessary for me to speak.

The Commissioners called upon Staachas to speak who said, how is a cheifs language? How is the Big Cheif talk? Where has their talk sprung from? That they have spoken straight on the part of the Indians; the Lawyer although young has spoken well for me. Who is it that is going to speak straight for all of us. Now I want the whites and the Indians to show all their hearts; you know and we all know life while we are living, and I ask you my friends to speak straight and plain to us, as if I spoke to the President I say Yes. I would wish that the President was here so that we might all listen to him; he would enlighten us, he would give us life, he would make us to live as we ought to live, we would give each other our hands to hold always.

Lawyer spoke first and he will have more to say about this we are now speaking of. Lawyer has asked you to speak plain. I make the same request. I have nothing more to say.

Pee-o-pee-mox-a-mox said: I do not know what they (the Interpreters) have said. My heart was heavy, my heart has to separate so, that was my heart. I do not know for what lands they (the Interpreters) have spoken. If they had mentioned the lands that had spoken of them I should have understood them. Let it be as you propose so the Indians have a place to live, a line as though it was fenced in, where no white man can go.

If you say it shall be so then all these Indians will say yes. Although that you have said the whites are like the wind; you cannot stop them, you make good what you have promised.

You have spoken for lands generally. You have not spoken of any particular ones, your words are here (at this place). If you spoke as the watch goes, then we would say yes; the manner in which you have addressed the whole of us has made my heart heavy. I had nothing to say: I like you Americans; and I like the Hudson Bay Co. people, by which means I am led this way and that way; I do not know as yet what lands these Indians have spoken for but when they mention the lands then I shall know.

218 Fah-hah-tail-pilp or the Red Bear said: I am not ashamed of any of my friends, for why should I be ashamed? If there was something above that I should be ashamed of, then I should be ashamed; I am not ashamed of any people that are sitting around, we have spoken here with our brothers. This is the first time I have ever seen my brothers here.

I like your talk very much as I have heard it, and that is the reason I have listened to you well. And here where we see each other face to face we will talk straight. We shall know if you shall like my talk that I am now talking as I have like yours. I wonder if we shall both tell the truth to each other.

This is what I think my Brothers, that one time more we will talk, we will not say yes from what has yet been said.

Now my younger brother there will speak. Being thus called upon.

Tip-pee-il-lan-ah-cow-pook, or the Eagle from the Light arose and said: Yes my friends you see where the Sun is. He hears me. It is from beyond where the Sun is that sent you here to talk.

The red people are put on this earth. A white man was sent on this earth from the Light (meaning the East). The red man was sent from the West, and now the big chief from the Light has sent his talk here to the red people.

The President has spoken to me through you and I hear it. He like us. He has fixed places for us to sit on and love one another. And I also like the white people as the President likes us.

On a road ready finished, he has sent you here. Look at the face of the earth, there is a road to travel on. Roads up the valleys and roads on to the end of the earth. From the time you started, you found a road till this time.

You are now come to join together the white man and the red men.

And why should I hide anything? I am going now to tell you a tale. I like the President's talk; I am glad of it when I hear it here and for that reason I am going to tell you a tale.

The time the first white men ever passed through this country, although the people of this country were blind, it was their heart to be friendly to them. Although they did not know what the white people said to them they answered yes, as if they were blind. They traveled about with the white people as if the people that said that had been lost, and these lost people said to them; yes.

I have been talked to by the French and by the Americans, and one says to me, go this way, and the other says go another way; and that is the reason I am lost between them.

A long time ago they hung my brother for no offence, and this I say to my brother here that he may think of it.

Afterwards came Spalding and Whitman. They advised us well and taught us well, very well. It was from the same source, the Light (the East). They had pity on us and we were pitied. And Spalding sent my Father to the East—the states—and he went. His body was never returned. He was sent to learn good counsel and friendship and many things. That is another thing to think of.

At the time, in this place here, when there was blood spilled on the ground, tho there was blood upon the earth we were friendly to the whites and they to us. At that time they found it out that we were friends to them. My Cheif, my own cheif said, I will try to settle all the bad matters with the whites and he started to look for counsel to straighten up matters; and there his body lies, beyond here. He has never returned.

219 At the time the Indians held a grand Council at Fort Laramie. I was with the Flatheads and I heard there would be a council this side, next year. We were asked to go and find counsel, friendship, and good advice. Many of my people started and died in the country. Died hunting what was right. There was a good many started there on Green River, the small-pox killed all but one. They were going to find good counsel in the East; and here I am looking still for counsel, and to be taught what is best to be done.

And now look at my peoples' bodies scattered everywhere hunting for knowledge, hunting for someone to teach them to go straight.

And now I show it to you, and I want you to think of it. I am of a poor people.

A preacher came to us, Mr. Spalding. He talked to us to learn, and from that he turned to be a trader, as though there was two in one, one a preacher and the other a trader. He made a farm and raised grain and bought our stock, as though there was two in one; one a preacher the other a trader.

And now from the East has spoken and I have heard it. And I do not wish another preacher to come and be both a trader

and preacher in one. A piece of ground for a preacher, big enough for his own use, is all that is necessary for him.

Look at that, it is the tale I had to tell you, and now I am going to hunt friendship and good advice.

We will come straight here—slowly, perhaps—but we will come straight.

Gov. Stevens said: My brother, if any of you wish to speak today, I will still be silent. Is there anyone who wishes to speak now? If not, I will go on. We have listened to you carefully. We think we know your hearts.

You are willing to make a bargain. You want to know exactly the terms. We have promised mills, shops, schools, teachers, farmers, and all the other things for a term of years. You want to know how many years. We have promised you as the other part of the payment clothing for yourselves, your wives, and your children; tools and implements for your farms and shops and articles for your house.

You want to know how much clothing. How many implements and tools and articles for your farms, your shops, and your houses; and how many years will you have them?

Before I answer that, I will answer *answer* another question which you have asked me. You want to know where your Reservations are to be. What is the ground we have in view for you. I will explain this matter freely.

Here are Nes Perses, Cayuses, Walla Wallas, Yakamas, and Umatillas and bands on both sides the Great river to below the Dalles. Tribes northwards: Colvilles, O-kin-a-kuns, Palouse.

For the principal tribes here present, we have thought of two Reservations. One Reservation in the Nes Perses country and one in the Yakama country. The Reservation in the Nes Perses country, to extend from the Blue Mountains to the spurs of the Bitter Root, and from the Palouse river to part way up the Grande Ronde and Salmon River.

On this Reservation we wish to place the Spokanes, the Cayuses, the Walla Wallas, as well as the Nes Perses, and also the Umatillas. That will be something for them to think about to see whether they can agree to it.

The Yakama Reservation to extend from the Attannua river—to include valley of the Pisco river—and from the Yakama river to the Cascade Mountains. On this Reservation we wish to place the Colvilles, O-kin-a-kunes, Palouse, Pesquouse, Klit-a-tats, and the bands on the north side of the river below the Walla Wallas as far as the Kuth la poddle river, neat the Cowlitz. All these as well as the Yakamas on that Reservation.

There is a third Reservation East of Mr. Jeffersons which will be explained to you by Gen'l Palmer; there it is proposed to place the bands below the Umatillas.

We want you to think about this and see if you like it You may think the Reservations are not good. If not you will say so. The Cayuses, the Walla Wallas, the Umatillas, may prefer the Yakama to the Nes Perses Reservation, and they may not like either.

I will give briefly the reason for selecting these two Reservations. We think they are large enough to furnish each man and each family with a farm, and grazing for all your animals. There is especially in winter grazing on both Reservations. There is plenty of Salmon on these Reservations, there are roots and berries. There is also some game. You will be near the Great Road and can take your horses and your cattle down the river and to the Sound to market.

Though near to the great roads, you are a little of from them, and you will not be liable to be troubled by travellers passing through.

We can better protect you from bad white men there. We can better prevent the trader and the preacher all in one man going there. We can better prevent bad men telling you to dance, and cheating you with lies. We can better stop the theif who comes to steal your horses Your horses will be saved to you and there will be no theives to throw into hell-fire.

You may ask, why so many tribes on one Reservation, and how is it proper to place them on the Reservation?

We want as many tribes together as can be taken care of by one agent. We can do more with the same means; this is a matter I wish to explain fully, and also about the payment in clothing, etc., which I mentioned in the first part of what I said, I will speak no more today, but speak tomorrow. Think over what I have said and hear the rest tomorrow.

Gen'l Palmer said: I shall say nothing to you tonight. You have been sitting a long time and you are tired. We want you to come tomorrow morning early. We want you all to come. You have heard but part, we want you to hear the whole, and when you hear all I think you will say it is good. I have nothing more to say tonight.

The Council then adjourned at 6 P. M.

June 5th—Tuesday

The Indians began to collect at 11½ A. M. and at 12 M. the Council opened.

Gov. Stevens said: My Children, I stated yesterday that we wished to place you on two Reservations and that as regards the

tribes below the Umatillas. There was a third Reservation which would be explained by my brother, Gen'l Palmer. I stated we wanted as many tribes as could be taken care of by one agent.

I will now explain this matter more freely. We wish to put the Spokanes, the Nes Perses, the Walla Wallas, the Cayuses, the Umatillas on one Reservation in the Nes Perses country.

221 Here [showing a draft on a large scale] is a map of the Reservation. There is the Snake river. There is the Clear Water river. Here is the Salmon river. Here is the Grande Ronde river. There is the Palouse river. There is the El-pow-wow-wee.

We commence where this river, the Palouse, comes from the mountains, and down the river to the mouth of the Ti-not-pan-up, then to the Snake river 10 miles below the mouth of the El-pow-wow-wee, then to the source of the El-pow-wow-wee, thence along the crest of the Blue Mountains to the Grande River below the Grande Ronde, thence along the ridge between the Wall-low-low river crossing the Snake river 15 miles below the mouth of Powder river, thence to the Salmon river a little above the crossing, thence by the spurs of the mountains to the source of the Palouse river at the place of begin'ing.

This is a large Reservation. The best fisheries on the Snake river are on it; there are the fisheries on the Grande Ronde river. There are fisheries on the Os-ker-wa-wee, and the other streams. There are cumash grounds here at this place [pointing to the large cumash grounds of the Nes Perses]. We feel if we put you on this Reservation our agent can visit you all and take care of you all.

Each tribe will have its own place on the Reservation. The Spokanes will have their place and their home. The Nes Perses their place and their home. The Walla Wallas their place and their home, the Cayuse and the Umatillas their place and their home.

The Spokanes will have a blacksmith, a school, and a farmer. The Walla Wallas will have a blacksmith, a school, and a farmer. The Cayuses and Umatillas will have a blacksmith, a school, and a farmer. The Nes Perses are more numerous, they will have two blacksmiths, two schools, and two farmers.

These schools are the first schools where your children will learn to read and write. The agent will live in some central place where there will be an agricultural and industrial school common to all the tribes. To this school all the tribes will send such of their children as wish to study more than in the first schools, and to learn trades. Here where the agent lives will be the tinner and the tin shop. There will be one for all the tribes.

There will be the waggon maker and wheel wright; there will be one for all the tribes.

For the four tribes there will be two saw-mills and two flouring mills in proper localities. Thus all the tribes will be on an even footing, and each will have the same provision made for them.

You will see that you will be better taken care of all on one Reservation; each tribe having its own place, then if the Spokanes were on one Reservation with the whites all around them, the Nes Perses on one Reservation with the whites all around them, the Cayuses and Umatillas on one Reservation with the whites all around them.

Here [showing the map] you will be on one Reservation with equal rights under one Agent, and the same provisions for your welfare. But each tribe has its head cheif. A cheif takes care of his people. His people listen to him. He devotes his time, his very life to their good. We want you cheifs to be such men, we expect them to know about you and to see that we do our part. They will not work for themselves, they will work for you. We shall therefore give the Head cheif of each tribe Five Hundred Dollars a year for 20 years to be paid in cash.

We shall build for each Head Cheif a good house to live in. The Agent will have his house and he will be paid. The Head Cheifs shall have their houses and be paid. They will all labor for the good of the Indians.

222 You will be allowed to pasture your animals on land not claimed or occupied by settlers; white men. You will be allowed to go on the roads, to take your things to market, your horses and cattle. You will be allowed to go to the usual fishing places and fish in common with the whites, and to get roots and berries and to kill game on land not occupied by the whites; all this outside the Reservation.

My friends, I have held four councils on Puget Sound, I have made treaties with all the Indians on that sound. They number more than all the tribes here present. They have agreed, should the President decide, to go on one Reservation. That Reservation is only about one fiftieth part as large as this; they have, however, few horses and cattle. They have not three hundred head. They take Salmon and catch whale and make oil. They ask for no more land. They think they have land enough. You will be farmers and stock raisers and wool growers and you need more.

Now I will tell you the payments that will be made provided you are placed on one Reservation. If you go on different Reservations different provisions will be made. Well, you all go on one Reservation, Spokanes, Nes Perses, Walla Wallas, Cayuses,

and Umatillas; we shall spend a certain amount in moving you onto the Reservation, in breaking up and fencing your farms, in building houses for your cheifs, your sub-cheifs and your people, in cooking utensils for your houses, in milk pans and churns, in a good supply of blankets and clothing. In all these things we will expend for you, One Hundred Thousand Dollars. This will be done the first year you go on the Reservation.

Now if any man gives up a tract of land in going onto the Reservation, he will have the same thing done for him that is done for all the rest and he will have, in addition, his improvements made good to him on the Reservation or the value of them paid to him in cash, as he may desire.

The other payments extend through twenty years. Two Hundred and Fifty Thousand Dollars. We do not want to spend this amount or much of it in cash, and I want my friend Pee-o-pee-mox-a-mox and the other cheifs to listen while I give the reason. I ask all the cheifs to hear my reasons and think of them.

We can furnish you with nearly twice as many goods with the same amount of money as you can get from the Traders. We shall buy the things you want in New York and San Francisco at cheap rates and good articles. The expense of getting them to you will not come out of your money; it will cost you nothing. You now pay Eight or Nine Dollars for a blanket at Fort Walla Walla, we shall furnish you two such blankets for less than that sum, say from six to seven dollars. At For Walla Walla a flannel shirt costs three dollars, we will give you three shirts for three dollars. You pay for a calico shirt at Walla Walla one and a half and two dollars. We can furnish calico shirts for fifty cents a piece. If we furnish the goods therefore, you will get three blankets, three flannel shirts and three calico shirts for the same money you now pay for one blanket, one flanniel shirt, one calico shirt, and have to make a long journey for them besides. We can furnish four hoes for a dollar and a half. You know what you have to pay for a single hoe at Fort Walla Walla and the Dalles. We want the payments to do as much for your good as possible. We don't want half of it to go into the pockets of Traders.

I ask the cheifs to listen to me again.

There will be a certain sum each year for their people. We want them each year to consult their people and tell us what things they want. We want them to make out a list how many blankets they want and what kind of blankets, the number of flannel and calico shirts they want, and so for every article of clothing for their men, women and children. Also the tools

they want for their farms, their house and their shops. In short we want the cheifs to tell us how they want the money spent. The list to be made out every summer for the pay of the next year. If you want part of the pay made in money, we want you to give the reasons and state the sum each year. We will send your reasons to the President and let him decide. There are many of you we would be willing to give a part of the payments in money, but not to the men who drink whiskey, and not to the men who do not take care of their wives and children. Let, therefore, your cheifs each year make out a list of how much money and we will send it to the President.

223 I have now a few words to say in regard to the Yakama Reservation; the same provisions as regards schools, farms, and shops will be made as in the case of the Nes Perses Reservation.

Here is the Yakama Reservation, commencing with the mouth of the Attanum river, along the Attanum river to the Cascade mountains, thence down the main chain of the Cascade mountains south of Mount Adams, thence along the Highlands separating the Pisco and the Sattass river from the rivers flowing into the Columbia, thence to the crossing of the Yakama below the main fisheries, then up the main Yakama to the Attanum where we began.

We propose to place there the Colvilles, the O-kin-a-kunes, and Pisquouse Indians (they now send their cattle and horses there in winter), also the Bands on the Columbia River below the Walla Wallas down to the mouth of the Kuth la poodle river, also the Klicatat around Mount Adams and Mount St. Helens. These Klicatats and these bands on the Columbia originally came from here or further north.

We will give one blacksmith, one farmer and one school for the Colvilles, one of each for the Pisquouse and O-kin-a-kunes, one of each for the Yakamas, one of each for the Yakamas including the Palouses, one of each for the remaining bands. They shall have the agricultural and industrial school as in the other Reservation. They shall have the same mechanics, gun-smith, tin-smith, plough and waggon makers. Their children shall be taught and they shall learn trades like the children on the other Reservation. They shall have the same liberties outside the Reservation to pasture animals on land not occupied by whites, to kill game, to get berries and to go on the roads to market. Payments to be made in the same way as in the Nes Perses Reservation. One Hundred Thousand Dollars to be expended the first year. Two hundred and Fifty Thousand Dollars the next Twenty years.

I need say nothing more. It is designed to make the same provisions for all the tribes and for each Indian of every tribe. The people of one tribe are as much the people of the Great Father as

the people of another tribe; the red men are as much his children as the white men.

We think this plan will be for your good. We want you to think of it. I have tried to talk plain and to speak straight out. My brother will now speak.

224 Gen'l Palmer said: My Brothers, my brother here has said as much perhaps as could be said. He has told you what we desire to do for you; it is for you to say whether you will receive it or throw it away: we have but one heart; he has been speaking of something which interests you; it is the duty of your cheifs and your men to think well of it. It was said by this man (Young Cheif) the other day that we were not acting wholly for those that are here now, but for those who come after us; it is the duty of a parent to provide for his children. You may not understand all the advantages of the propositions that have been made to you; but they are for your benefit and those who come after you; as a cheif desiring to promote your interests, I say it is good; that I would not deceive you; the Great Spirit who knows the heart of all men knows that I desire to promote your good.

We expect it will take at least two years to prepare these reservations for you to go onto. If we make a bargain and sign the papers, my Brother and myself and all the Head Cheifs and Head men, that paper must go to Washington. Our Cheif and his council will examine it: if they approve it they say yes, and give us the money to expend in accordance with its provisions.

My brother has stated that you will be permitted to travel the roads outside the Reservation. We have some kind of roads which perhaps you have never seen; we may wish to make one of the roads from the settlements east of the mountains to our settlements here: they may desire to run that road through your Reservation; if we desire to do so we wish that privilege; that kind of road we call a railroad. I will try and explain to you the way in which we make such roads. We first lay on the ground sticks of timber, we then lay other sticks across in that way, unite them together and put a strip of iron on the top of them, we then place a waggon on those tracks and instead of having horses or oxen hitched to the waggon we build a fire; some of you have seen a steamboat; they have on this waggon a boiler filled with water, the fire heats the water and produces steam, which propels the machine. I am unable to explain all the machinery or the way in which it works but they will travel faster than your swiftest horses can run, all the time. If we start from here at Sunrise we can be at Wascopen by the middle of the day. We sometimes attach twenty of those waggons together and one of those Engines draws the whole, they will take waggons enough to draw more people

than are here. We call the waggon in which they have the fire and water a Locomotive: I have rode on those waggons many a time, so have our people here all or nearly all of them. Now if our cheif desires to construct such a road through your country we want you to agree that he shall have the privilege. You would have the benefit of it as well as other people.

We have another improvement that I wish to speak to you about, it is called a Telegraph. We may possibly desire to make such an improvement through your country. We set posts into the ground 15 or 20 feet high, and as far from here as that house; when the posts are set we place a wire on the top about as big as that; this wire extends as far as we wish to make the road if it is 100 or 1,000 miles.

If my brother is at Oregon City and desires to speak to the Great Cheif he speaks to him if the wires extend that far; the man at the other end of the land will know what he says as quick as I who stand beside him; if the instrument which is attached to this wire should be in your country and a man should steal your horse, and you desired to send word to the Willamette Valley, you would tell this man and he would work the machine and the man in the Willamette would understand you had lost a horse, and before the theif could reach there they would know it, arrest him before he came. You may not understand them now, but when you know as much as the white man you will.

Now as we give you the privilege of traveling over roads, we want the privilege of making and traveling roads through your country, but whatever roads we make through your country will not be for your injury.

225 I told you yesterday I would explain to you another Reservation, but that Reservation is for the people who live below here; there are but few of them there; and as I expect to hold a council with them when I return, and as that Reservation does not particularly interest you, I need not explain it now.

Now I want you all to talk among yourselves and think about what has been said to you, and I want you to think of it like men. When you think of it if you say that what we have said is good and that you receive it, you can express it to us and we can soon write out the Treaty.

You are now tired, you have been long sitting, you know our hearts, and if there is anything you do not fully understand before you make up your minds come and inquire and we will explain. If any of you wish to speak now we will listen to you. Or if you can make up your minds so as to give us an answer this evening come and do so and we will be ready to receive it.

Stachas said: My friends I wish to show you my mind, interpret right for me. How is it I have been troubled in mind? If your mothers were here in this country who gave you birth, and suckled you, and while you were sucking some person came and took away your mother and left you alone and sold your mother, how would you feel then? This is our mother, this country, as if we drew our living from her.

My friends, all of this you have taken. Had I two rivers I would be content to leave the one and live on the other.

I name three places for myself, the Grande Ronde, the Touchet towards the mountains, and the Tucannon.

That is all I have to say.

After a long pause——

Gov. Stevens said: My brothers, if you do not feel inclined to speak today, we will come together again tomorrow.

We want all the cheifs and the people to speak freely as Stachus has done. We will think of what Stachus has said. We could give our reasons now but we are all tired. We will tomorrow after you have spoken, state what we think. Come early in the morning and let us see if we cannot agree before night.

The council is adjourned till 9 o'clock tomorrow.

Five Crows said: I am as it were without thinking yet. I require time to think and then I will answer.

Council then adjourned at 4½ P. M.

Thursday, June 7th

Council met pursuant to adjournment—at 12 o'clock—present as before.

Gov. Stevens said: My brothers we expect to have your hearts today, let us have your heart straight out.

Lawyer said: My friends you have been speaking to me a poor people. This Earth is known as far as it extends. This earth has red people on it and it has had as far as it extends. The people are lost, they don't think whose talk has come to us poor people. On the other side of the big water there is a large country. We also know that towards the east there are a great many different kinds of people: there are red people and yellow people, and black people, and a long time ago the people that travelled
226 this country passed on the waters. And there is that country on that other side of the big water and here is this on this side. On the other side of the big waters they have their laws. Yes, that have their laws there. We now hear the laws they have there, and we now know they have those laws there. We also know the white people pass about on the waters as they wish to. I do not know what they find in travelling about on these waters or what

they are hunting, whether it is timber, leaves, grass, or what. It was the Spaniards in that direction that first travelled about in their ships, they were the ones who first discovered this country and it was in that way they travelled to look for things, in that way they travelled when they found this country: the red people that along the shores to the big waters, those were the people, and at this place they landed to see those poor people. At that place the red man started and run off, or a part of them did because they did not know the people who came to see them, and the rest come and met them, there is where the white people first placed their children when they first came into the land. From this country they took back samples of rich earth, of flowers, and all such things; they also reported that there was a country on the other side, and it was peopled and these people reported they had found a country. And it was known that there was a new country found. And one of the head men said. I knew there was a country there before. Columbus the discoverer said Can you make an egg stand on end. Although he tried he could not do it, he did not understand how, it fell over; then Columbus showed them all that he could make it stand, and he did it, he made the egg stand. After they saw it done they could all do it.

Those children that he had placed in this country among the red people, from them the blood ran on both sides; that is when the laws came into this country to those poor people; there were a great many white people came back to that place; that is the reason the red people traveled off further and from that they kept still travelling on further as the white people came up to them and this man's (Delaware Jim) people are from the same people; they have come till they are here to us now, and from that country some central part came Lewis & Clark, and that is the way the white people travelled and came in here to my forefathers. Where they came into our country they named that stream Kooskooski; it was then they knew us poor people. They passed through our country and knew all our country and all our streams, and on their return my forefathers used them well; as well as they could.

From the time of Columbus and from the time of Lewis and Clark we have known our friends; we poor people have known you as brothers although we were a poor people, a people knowing nothing when we first saw the white cheifs Lewis & Clark. From these poor people there were some of them that started in that direction (east) and of these there is only one now living (Spokane Gerry) they went to be taught, they returned after they could see a little and told us about the Great Spirit; they told us the laws for the poor people; they had seen and heard them.

My Chief said our old laws are poor, the new laws we are getting are good laws, are straight. We said there were these laws, the laws of the Commandments; our old laws the laws of our forefathers and the new laws we are getting shown to us and when the French and American traders first came to us they told us there were laws and those laws should be sent to us.

Ellis our Chief spoke strait for the white people, the President has sent you here to us poor people. Yes! the President has studied this and sent you here for our good. That is the reason I said on Monday use us well my Chief we are a poor people.

The Governor has said the President has sent him to take care of his children; it was you that had spoken thus my brothers (Gov. Stevens and Gen. Palmer) I want the President to see what I a poor man has said. I have got your talk here [pointing to his note book] and although a poor man I can look at it from time to time. I can take care of that; my brother, we have been talking a long time and are all tired.

I think on the stream just below where Mr. Craig lives will be a good place for one mechanic or one of the ranches you have shown me. I also think perhaps in the country where I live may be good place for some more of them, in case they were crowded below it would be a good place where I live.

227 Now, my friends, I have spoken; those things that have been talked of, you know. I have shown you my heart. You have said to them all you had to say. I have also given you all I had to say.

There, my friends, I have spoken; those things that have been talked of you know. I have shown you my heart. You have said to them you have said all you have to say. I also have said also all I have to say.

You spoke of a road through my country (the Reserve); it is a bad country to make roads in, but perhaps it may go through; that is the reason I think we have both talked. 'Tis all our talk. Our Father Chief has said take care of one another. There is no reason that I should speak long although I have more to say. That is the reason I say take care of us well; that is all I have to say at this time, my brethren. I will have one word more to say when we are about to part.

Gov. Stevens. We have the heart of the Nez Perses through their Chief; their hearts and our hearts are one. We want the hearts of the other people through their Chiefs.

Young Chief. Us Indians are blind the reason we do not see the earth well; the Lawyer sees clear. The reason that I do not know anything about this ground is I do not see the offer you have made us yet. If I had the money in my hand then I would

see; the country is very large is the reason this land is afraid. I wonder if this ground has anything to say; I wonder if the ground is listening to what is said. I wonder if the ground would come to life and what is on it; though I hear what this earth says, the earth says, God has placed me here. The Earth says that God tells me to take care of the Indians on this earth; the Earth says to the Indians that stop on the Earth feed them right. God named the roots that he should feed the Indians on; the water speaks the same way; God says feed the Indians upon the earth; the grass says the same thing; feed the horses and cattle. The Earth and water and grass says God has given our names and we are told those names; neither the Indians or the Whites have a right to change those names; the Earth says, God has placed me here to produce all that grows upon me, the trees, fruit, etc. The same way the Earth says, it was from her man was made. God on placing them on the Earth telling them to take good care of the earth and do each other no harm. God said: You Indians who take care of a certain portion of the country should not trade it off unless you get a fair price.

I am as it were, blind. I am blind and ignorant. I have a heart but cannot say much; that is the reason the Chiefs do not understand each other right. They stand apart. Although I see your offer before me; I do not understand it. Lawyer understood your offer and he took it. I do not understand it and I do not yet take it. I walk as it were in the dark and cannot therefore take hold of what I do not see. Lawyer sees and he takes hold. When I come to understand your proposition then I shall take hold. I do not know when. 'Tis all I have to say.

Five Crows said: I will speak a few words. My heart is just the same as the Young Chief.

Gen. Palmer. We know no chief among the Walla Wallas but Pe-pe-mux-mux; if he has anything to say we should be glad to hear it.

Pe-pe-mux-mux. I thought these Indians were all the same as one, all alike [beckoning the Indians he said]. Why do you speak to one another? Listern to me. That is the way with your Chiefs, you white people. When you show us something then we think it good, treating us as children, giving us food. I do not know what is strait. I do not see the offer you have made to the Indians. I never saw these things with my father. My heart cried very hard when you first spoke to me, the same as if I
228 was a feather. I flew, then I thought the same as if you were talking to a feather. I thought what will I do? I have seen everything on both sides of the river. You are all talking together; we are all talking together. If you were to separate as we are now and appoint some other time we shall have no bad

minds. Stop the whites from coming up here till after this talk, not to bring their axes with them, the same as if I saw my heart above.

I hope the President will not think I say or mean anything bad, there is no difficulty in sending letters about; this that I have said to you I do not know in what light you have taken it, whether I have spoken straight or wrong. The whites may travel in all directions through my country we shall have nothing to say to them providing they do not build houses on our land. Now I will speak about Lawyer.

I think my friend has given his lands, that is what I think from his words. You hear both of you what I say, it is why that I request another meeting, whenever it shall be. It is not only by one meeting that we can come to a decision. I have listened to you in a friendly way. If you come again with a friendly message from the President I shall see them at this place, tomorrow I shall come to see you, and towards evening I shall go home. You have spoken to us in a friendly way and I speak to you in the same way, slowly. Gov. Stevens and Gen. Palmer I cannot give you a decided answer, perhaps you will not think well of my words. I beg you will leave me in this way for today. Tomorrow I will give you answer. I do not know; that is all I have to say.

Gen. Palmer. I wish to say a few words to these people, but before I do so if Kam-i-ah-kan wishes to speak he can do so.

Kam-i-ah-kan said: I have nothing to say.

Gen. Palmer. I would inquire whether Pe-pe-mox-mox or the Young Chief speaks for the Umatillas. I wish to know if they are of the same heart.

Owhi. I have nothing to say about this land today. God gave us day and night, the night to rest in, and the day to see, and that as long as the earth shall last, he gave us the morning with our breath; and so he takes care of us on this earth; and here we have met under his care. Is the earth before the day or the day before the earth. God was before the earth, the heavens were clear and good and all things in the heavens were good.

God looked one way then the other and named our lands for us to take care of. God made the other. We did not make the other, we did not make it; he made it to last forever. It is the earth that is our parent as it is God is our elder brother. This leads the Indian to ask where does this talk come from that you have been giving us. God made this earth and it listens to him to know what he would decide. The Almighty made us and gave us breath; we are talking together and God hears all that we say today. God looks down upon his children today as if we were all in one body. He is going to make one body of us; we Indians present have listened to your talk as if it came from God.

God named this land to us that is the reason I am afraid to say anything about this land. I am afraid of the laws of the Almighty, this is the reason I am afraid to speak of the land. I am afraid of the Almighty, that is the reason of my hearts being sad; this is the reason I cannot give you an answer. I am afraid of the Almighty. Shall I steal this land and sell it, or what shall I do? This is the reason that my heart is sad.

My friends, God made our bodies from the earth as if they were different from the whites. What shall I do? Shall I give the lands that are a part of my body and leave myself poor and destitute? Shall I say I will give you my lands? I cannot say. I am afraid of the Almighty.

229 I love my life is the reason why I do not give my lands away. I am afraid I would be sent to hell. I love my friends. I love my life, this is the reason why I do not give away my lands. I have one word more to say.

My people are far away they do not know your words, this is the reason why I cannot give you an answer now. I show you my heart, that is all I have to say.

Gov. Stevens. Now will Kam-a-ah-kan and Skloom speak.

Kam-a-ah-kan. What have I to be talking about?

Gen. Palmer. We have listened and heard your Chiefs speak. The heart of the Nez Perces and ours are one. The Cayuses, the Walla Wallas, and these other people say they do not understand us. We were in hopes we would have but one heart. Why should we have more than one heart? The Young Chief says he does not see what we propose to give them. Pe-pe-mox-mox says the same. Can we bring these saw mills and these grist mills here on our backs to show these people? Can we bring these blacksmith shops, the wagons, & tools on our backs to show them at this time? Can we cause farms of wheat and of corn to spring up in a day that they may see it? Can we build these school houses and these dwellings in a day? Can we bring all the money that these things will cost that you may see it. It would be more than all the horses of any one of these men could carry. It takes time to do these things. We come first to see you and make a bargain. We brought but a few goods with us to give you but whatever we agree to give you you will get.

How long will these people remain blind. We came to try to open their eyes, they refuse the light. I have a wife and children, my brother has also a wife and children. I have a good home, fields of wheat, potatoes, oats, peas, and beans. Why should I leave them and come so far to see you? It was to try and do you good but you throw it away. Why is it that you do so? We all sometimes do wrong. Sometimes because our

hearts are bad, and sometimes because we have bad council. Your people have sometimes done wrong. Our hearts have cried. Our hearts will cry, but if you will try and do right we will forget it. How long will you listen to this bad council and refuse to receive the light?

I too love the earth where I was born. I left it because it was for my good. I have come a long way. We ask you to go but a very short distance. We don't come to steal your lands, we pay you more than it is worth. Here is this little valley and the Umatilla valley that affords a little good land, between these two streams and all around it is a parched up plain. What is it worth to you or to us? Not one half of what we have offered for it. Why do we offer you so much? It is because our Chief has told us to take care of his red people. We come to you with his messages to try and do you good. You throw his words behind you. Why do you do it? Because you have listened to bad council.

I told you the difficulties that existed between the whites and the Indians beyond the mountains. If the whites and the Indians live together here as they did there, it would be the same. Our Chief knows this and he sent us here to see you and to talk with you, this we do before there are many whites here.

Pe-pe-mox-mox says "let us part and appoint another day." Before that day would arrive we might have a great deal of trouble. Gold has been found in the country above yours. Our people are very fond of it. When our people hear this they will come here by hundreds, among these who come there will be some bad people, those bad people will steal your horses and cattle. There are but few of you, you cannot prevent it when you are scattered over a great extent of country, you cannot prevent it; but if you are living in these reservations we can protect you and your property. Then why should you refuse to receive our talk and refuse to allow us to protect you? Your refusal to receive it is not such talk as should come from Chiefs desirous of promoting the interest of their people. I want you to think more of this tonight and if you act like wise men I think you will arrive at a different conclusion.

230 We expect to perfect the arrangements with the Nez Perces perhaps tomorrow. We have but one heart, we expect it will always remain so. We want the Walla Wallas, the Cayuses, and the Umatillas to unite with us and have but one heart. We want you to stop your ears against bad council and receive that which is good. We do not come among you as traders, we come bearing the words of our Great Chief. If you refuse to receive it our hearts will be said. Our hearts will be

sorry for these chiefs for we like them. Our hearts will be sorry and bleed for all these old men. Our hearts will be sorry and bleed for these young men. Our hearts will be sorry and bleed for these women and children.

We want to help you to put food into your lodges and homes. We want to help you to get clothes and blankets to cover you from the storm; we want to help you to get arms and ammunition to kill game; we want to open your eyes and give you light that you may see. We want to make you a good people.

Will you receive our talk or will you throw it behind you. My heart will be glad tomorrow if you come and say we are all of one heart.

What I have said is for your good; think of it. I have nothing more to say.

Cam-an-pello. It is true you have mercy on us. I think it is true what you have been saying; if you were to send me into a mountainous country still I would say you have mercy on us. What would I be glad for? I was glad to hear the first talk by the Governor, that was the reason I was glad to hear what they said. I would be very glad if he had said to me stop ever on one side, then I would be glad.

What would I be glad about if I were to take a thing and throw it away? That is the reason my heart cries. If you would show me fine lands and I were to see them then I would be glad and go to them. How do you show your pity by sending me and my children to a land where there is nothing to eat but wood? That is the kind of land up there, that is the reason I cry. Look at my hands! An old man. I have hurt them by hard work: then I ask myself have I labored in vain? What have I to be glad for?

The white man first showed me and aided me in making my garden and every mile I have been laboring. Will God think nothing of the labor I have bestowed on my garden? Do you do this to me in pity? I am really pitiable and therefore I pray night and day till I am tired. I have no books. The missionaries told me if I had no books I had a book in my heart which enabled me to pray to God. They told me in taking water to drink I should think of God, this I have not learned of myself, it is what they have taught me and I keep it. The laws of God are not alone for you, they are for me as well.

Woa-lish-wam-pum. I have got only two things to say. I have listened to your speech without any impression. I did not understand it. I know this. We are the same. You have life and breath you white people; we red people have life and breath. I think the old laws are straight, that they should still exist.

The Nez Perces have already given you their land. You want us to go there. What can we think of that? What is the reason I cannot think of leaving this land to go there? Your words since you came here have been crooked. That is all I have to say.

Gen. Palmer. I desire to say a few words in reply to Cam-an-pello, he says he "is an old man, he has worked hard in his garden." We have said that any man who has a garden or a field and who left it to go to this reservation should have as much improvement made there for him, or be paid for it in money as he chooses. We will go farther and say he shall have a better improvement; it shall have a better fence, be ploughed well. We will not take them there to starve, they shall live better than where they are and if there is not good land enough in the reservation to make them farms we will make it larger.

231 Gov. Stevens said: Although you are all tired, my friends, I must say a few words. My Brother and myself have talked straight. Have all of you talked straight? Lawyer has and his people have. And their business will be done tomorrow.

The Young Chief says he "is blind and does not understand." What is it that he wants?

Stickuss says his "heart is in one of the three places, the Grand Ronde, the Touchet, and the Tu-kan-on."

Where is the heart of the Young Chief?

Pe-pe-mox-mox "Cannot be wafted off like a feather." Does he prefer the Yakama reservation to that of the Nez Perces? We have asked him before, we ask him now—where is his heart?

And Kam-a-ah-kan the great Chief of the Yakimas has not spoken at all. His people have had no voice here today. He is not ashamed to speak—he is not afraid to speak—then speak out.

But Owhi is "afraid lest God be angry at his selling his land." Owhi, my brother, I do not think God will be angry if you do your best for yourself and your children. Ask yourself this question tonight. Will not God be angry with me if I neglect this opportunity to do them good? Owhi says his people are not here. Why did he promise to come here to hear our talk? I do not want to be ashamed of Owhi. Owhi has the heart of his brother Teayass and his people; we expect him to speak straight out.

We expect to hear from Kam-a-ah-kan from Skloom. The papers we will have drawn up tonight. You can see them tomorrow. The Nez Perces must not be put off any longer, their business must be dispatched.

I hope the hearts of all the others and our hearts will agree. They have asked us to speak straight, we have spoken straight. We have asked you to speak straight, but we have yet to hear from you.

Gen. Palmer. This man (How-lish-wam-pum) says the reason he does not want to go to the Nez Perces' country is that they have given it to us. If he and his people go on that Reservation it will belong to them as much as to the Nez Perces. They will all be served alike, every man will have his farm, it will be his.

Pe-pe-mox-mox says we have met as friends; let us say nothing that is bad, let us part friends. We have been friends a long time. I hope we shall always remain friends and as brothers. When we part we will part as friends. Then let us act as friends and as wise men.

Five Crows. Listen to me you Chiefs. We have been as one people with the Nez Perces heretofore; this day we are divided. We the Cayuses, Walla Wallas, and Kam-a-ah-kans people and others will think over the matter tonight and give you an answer tomorrow.

Owhi. Kam-a-ah-kan is the man who is to speak about these lands. I have nothing to say about them. We will settle the matter among ourselfs.

Gen. Palmer. We have heard what Five Crows have said. We want all this people to have one heart, they ought not to have two hearts. Our Great Chief looks upon them all as his children and I hope you will think on what is here said to you.

Gov. Stevens. My friends, we will meet in the morning again, we have to get through the business of the Nez Perces so that they may get home, they have a long journey before them. We shall meet as friends, I hope. Your hearts and ours will be united, I trust. We want every person to come early. If any person wishes to speak, speak now or otherwise we shall meet in the morning.

232 Council met at

Gov. Stevens said: My friends, judging from your faces, I think you see your way clear. The paper of the Nez Perces is nearly ready and soon will be read to them. We expect that the Young Chief, that Pee-Pee-mox-mox and Kamiakan will speak now, and we hope that with them the business may be concluded today. Let us know what they want, we are here for that purpose.

The Young Chief said: We have been tiring one another for a long time. We did not know our hearts, we did not understand each other on both sides, about this country. We have so many horses and cattle in this country is the reason we were troubled. Your marking out this country is the reason it troubles me so and has made me sit here without saying anything. You Americans, your forefathers are dying in your own country, as many of your people are wealthy in stock it requires a large tract to keep them. Those that have large bands of cattle marks each one a tract for himself. The reason why we could not understand

you was that you selected this country for us to live in without our having any voice in the matter. We will think slowly over the different streams that run through the country, we will expose the country and think over it slowly. I cannot take the whole country and throw it to you. If we can agree this country will furnish food for the whites and for us. The whites and ourselves will be compelled to have equal privileges in getting timber from the mountains to build our houses and fences; then we shall love one another. The good of you white people is foremost, the bad is behind, it is the same with us Indians; we keep the bad with us behind us. You embraced all my country; where was I to go, was I to be a wanderer like a wolf. Without a home, without a house I would be compelled to steal, consequently I would die. I will show you lands that I will give you, we will then take good care of each other. The reason for my uneasiness is for my stock which is running all over the country. Perhaps we will be compelled to divide with our stock, one taking one way the other another way, perhaps out there [pointing South] it would be well to draw a line to divide us. This is the reason why I think we should stop a while that we may come to an agreement. We will see when you make another offer whether we can agree to it. Wait, we may come to an agreement when we see your offer, if any people come send good people; those of the settlers who are here now it is well they should stay. I think the land where my forefathers are buried should be mine; that is the place that I am speaking for. We will talk about it, we shall then know, my brothers, that is what I have to show to you, that is what I love, the place we get our roots to live upon (meaning the Grand Ronde). The Salmon comes up the stream—that is all.

Gen. Palmer said: My brothers, when we quit talking yesterday your minds were very much troubled, you were unwilling to go to the Nez Perces reservation. We have thought of your words, The Nez Perces have a great many horses & cattle, you too have a great many horses & cattle, perhaps you might not agree together quite so well: your people appear to be much divided where to go. We asked you to give us your hearts and tell us where it was, the Young Chief (We * * *) has given us his heart, the Grand Ronde Valley. We have thought of the Umatillas. Many of your people died there. It is a good country for your horses and cattle. We desired first to have you go all to one place, but to show you that we wish to do you good I will make you another proposition. I propose to designate for the Cayuses, the Walla Wallas, & the Umatillas—To commence on the Columbia river [this is the Columbia river—pointing to the map] this is the Umatilla river, this is the Agency, this is McKay's place, this is Wild Horse Creek. Now I propose to select

a reservation commencing at the mouth of Wild Horse Creek and running up this creek to the mountains to the head waters of Hou-te-nic Creek, now down that creek till you strike Mr. McKay's claim, now across from his claim to the Umatilla river, then up to the mouth of the Wild Horse Creek, leaving Wm. McKay's claim out of the reservation. This will include all your farms, your houses, and gardens within the reservation. You will have sufficient grazing for your stock and land to make farms but your stock will have the privilege of grazing on any lands not claimed by the whites. If the whites should settle near to the reservation their stock might sometimes go onto the reservation while yours might go off it; if they should do so we would not want you to quarrel about it. We would build at suitable points on the reservation a saw-mill and a flouring mill;
233 we would employ millers to attend them for you for twenty years, and by that time you would be able to attend them yourselves. We will have one blacksmith shop and employ a blacksmith for 20 years; we will have a plow and wagon-makers shop and employ mechanics for that for twenty years; we will have a carpenter and cabinet makers shop and employ mechanics for that for 20 years—we will have at least two school houses and employ teachers for at least 20 years; we will build a hospital and furnish a doctor and medicines for twenty years; we will build a good house for Pee-Pee-Mox-mox, and a good house for the Chief of the Cayuse; we will build a house for Pee-Pee-Mox-Mox's son, we will plow and fence ten acres of land for Pee-Pee-Mox-Mox; we will plow and fence the same for the chief of the Cayuses; we will plow and fence five acres for Pee-Pee-Mox-Mox's son; we propose to do more for him and for his son because he leaves his country and goes to another place. We will give him as soon as he goes down to the Dalles for it $500 in money—we will give him 3 yoke of oxen, wagon and two plows—we also give him some other things which it is not necessary to mention. We give him a salary and also the chief of the Cayuses of $500 a year, in money, this to continue for twenty years—the same as is to be given to the Lawyer, the head chief of the Nez Perces. We give these salaries because they are the head chiefs, and are expected to labor for the good of their people, and in the event of the death of the head chief their successors get the salaries. Now in addition to these things we will expend fifty thousand dollars in the first and second years after the treaty is ratified. This money is to be expended in building houses, opening farms, buying teams and wagons, and paying persons working for them, and in any way that the President may deem best calculated to promote their interests. In addition to this there will be expended for you eight thousand dollars every year for five years,

for the next five years six thousand dollars a year, the next five years four thousand dollars a year, for the next five years two thousand dollars a year—this makes twenty years, and the amount to be expended one hundred thousand dollars ($100,000). This amount will be expended as the President may direct; we should consult you every year as to how you wanted it paid—part in money—part in goods. You will not be required to go onto this reservation till our chief the President and his council sees this paper and says it is good; and we build the houses, the mills, and the blacksmith shop. But we want you to allow the white people to come and settle in the country anywhere outside of the reservation. The President will have this reservation surveyed and marked off, so that every man that has a piece of land will know which is his. You will be allowed to go and catch fish and dig roots the same as the whites; and if any of our people do wrong to you you are not to shoot them, but to go to the Agent. We expect the chiefs to restrain their young men from doing wrong. We have a few goods here for you, those that we give you will be in addition to these payments, we charge you nothing for them. I have given you now my heart; I have offered you more than your country is worth—more than you know how to count. How long will it take you to decide? If you say it is good the papers can be arranged tonight, tomorrow they can be signed; we would then give you these goods and you could go home with a good heart. We have been here a good many days talking—we are all tired; we commenced far apart; it is for you to say now whether we shall come together. This I say to the Cayuses, the Walla Wallas, & Umatillas—those people are all interested; Pee-Pee-Mox-Mox being the first chief I want to hear from him. I have nothing more to say.

Pee-Pee-Mox-Mox said: The young chief has nothing more to say; he has said all he had to say, as if it was I that put obstacles in the way. Our hearts should not be otherwise than one. I have already spoken all that I have to say—I and Gen. Palmer talked this morning. They have already written all that we have said. I spoke this morning about having a little house, a place to sell my cattle on the other side of the Columbia where my cattle range for a trading post when the Americans pass. I have nothing to talk about; I have only a few words more. I said to Gen. Palmer that I desired permission to get fish there while I lived; when I learned that the house is made (meaning the reservation),
then I shall go there: when we have settled all things then
234 you have your presents for these Indians. Now that we have made up our minds if you think proper you may give us some provisions; sometime tomorrow in the afternoon we will go home; you are now tired—that is all I have to say.

Gen. Palmer said: That we have agreed that Pee-Pee-Mox-Mox shall have the privilege of building a house at the mouth of the Yakima and catching fish for five years. I should like to have all the chiefs and head men of the Umatillas, Cayuses, and Walla Wallas and also the name of every man on this paper that the President may see every man's name and know that they have given their consent.

Gov. Stevens said: My friends, I am glad Looking Glass, one of your chiefs, is coming, he is a friend of Kamiakun; we have now got nearly round the circle; our hearts are almost together; I call upon Kamiakun to say whether we shall get entirely around. My friends, Looking Glass is close by—he has come away from the Blackfeet—the buffalo country across the mountains; there is war; here is peace and friendship; let his first glance be upon you sitting here; when he is close by two or three of us will go and take him by the hand and set him down by his chief in the presence of his friend Kamiakun. Let us now have Kamiakan's heart.

235 Kam-i-ah-kan said: The place that I am from there are but few Indians—all have gone to the Calapooya country. Some are at Nisqually and some at Taih—that is the reason I have deferred speaking till I see my Indians. I wish the Americans to settle on the wagon route; we do not confine them to the road; they may settle about the road so that the Indians may go and see them. I do not speak this of myself it is my people's wish. Owhi and Teias and the chiefs. I, Kamiakan do not wish for goods myself. The priest knows me, he knows my heart he knows I do not desire a great many goods. All that I wish is for an Agent, a good Agent who will pity the good and bad of us and take care of us. I have nothing to talk long about. I am tired. I am anxious to get back to my garden. That is all I have to say.

Joseph, Nez Perce: These are my children [looking around]. I see them all sitting there; talking slowly is good. It is good for old men to talk straight; talk straight on both sides and take care of one another. It is not us, it is those of our children who come after us. It is good for the old people to talk together good and straight on account of our children on both sides to take care of each other till the last day, without speaking I am going. It is not anything bad that I am thinking that I am going without speaking, no, it is not anything bad, it is a place to live, a place for our good to live there. Think for year after year for a war away ahead. I wonder what you think if I could see your thoughts. It is not that there is anything bad that I speak. I hear you speaking to my children, and they

have many hearts. I am going without talking and you don't know my talk. At the Grand Ronde I saw my children on both sides; we have been talking and finished your talk; this is all I have to say.

Gov. Stevens said: If anybody wishes to speak we shall be glad to hear them.

Red Wolf said: I have only one or two things to speak. I want Mr. Craig to stay there in the Nez Perce country, and not go away. The reasons why I wish Mr. Craig to stay there is because he understands us, he speaks our language well; when there is any news that comes into the country we can go to him and hear it straight; the same for us when anybody comes to speak to us he will sit down with us and we understand them. It is good for him to stay there to interpret on both sides so that each can understand the other.

Gov. Stevens said: We wish to hear from Scloom, one of the Chiefs of the Yakimas.

Scloom said: What I have to say is about this the earth; it is long since the earth was made and the trees were made to grow out, and there was one there, a very small boy; I do not know what he knew but he took an axe and cut a tree, and marked it as if he has made a watch, he went, he went to the tree and looked up and saw a star, he took a line and measured the land from that tree; all the land he had measured he plowed; about half way on the line he threw the tree across. For this country that he had plowed up he got $800 for each mile. That is the reason the Indians like the place where they have their gardens; for the reason there was such a price paid for them; the land uncultivated where there are no gardens is not worth so much, it might be sold for $40 a mile. Why should I speak a great deal? We are not bargaining for lots; you know your own country above, you select your piece of land and pay a price for it. There it is the same and have choice. My friends, I have understood what you have said; when you give me what is just for my land you shall have it. This is all I have to say.

Gov. Stevens said: I have a word to say in answer to the marks of Skloom. Proposals have been made for the lands of the Yakimas and their neighbors; a place has been pointed out for the Indians to live in; outside of this place the gardens and farms are to be paid for in money at a fair value.
236 The price paid will probably be a good deal more than the price he has mentioned for those gardens. I say to Skloom, we do sell good lands for eight hundred dollars a mile, but not in this country. We do not expect to sell any of this land. Skloom probably knows that. I ask Kamiakan and I ask Skloom, make your own propositions. I also say to Owhi, let

us know what you think your lands are worth and where you want your home. We shall meet again in the morning. I want Kamiakun and his chiefs to make their own proposition. Looking-Glass is coming. We shall meet tomorrow morning.

Saturday, June 9th

The Council was opened at 2 o'clock P. M. When Gov. Stevens said:

My Friend, today we are all I trust of one mind. Today we shall finish the business which brought us together. Yesterday the Yakamas had not made up their minds fully. Today they and ourselfs agree; the papers have been drawn up. A paper for the Nez Perces; they live on one Reservation. A paper for the Walla Wallas, Cayuses, and Umatillas, they have their Reservation on the Umatilla. And a paper for the Yakamas, they have their Reservation. These papers engage us to do exactly what we have promised to do.

My brother explained yesterday to the Walla Wallas, Cuyuses, and Umatillas what would be given in their paper. It has been given to them in the paper.

In the paper for the Yakamas we have included the tribes who acknowledge Kam-i-ah-kan for their head chief. The Piscouse, the Swan-wap-um and Palouse, the Yakamas, and all the Bands on the Columbia below the Walla Walla down to the White Salmon River. They have their reservation and fishing stations which they well know and which I understand is satisfactory.

The Nez Perces have their reservation as was shown them in Council and in the paper everything was set down which was promised them. They all know what was said.

The money, the payment intended for the Nez Perces, the Walla Wallas, the Cayuses, and Umatillas has been divided. We have given two parts or a $150,000 to the Walla Walla, Cayuses, and Umatillas. We have given the Nez Perces three parts or $200,000.

In the Yagkama reservation we have not placed as many tribes as we expected. We have thrown out the Okan-ah-gans and Colvilles and the Tribes below the White Salmon. Their numbers are about the same as the Nez Perces. We have given them the same amount. There is the paper for the Nez Perces [holding it up], here is the paper for the Yakamas. My brother will show the paper for the Walla Wallas, the Cayuses, the Umatillas.

It is stated first in all the papers the Indians who signed the paper, then your lands are described. We have got the descriptions from yourselfs. Then your reservations are pointed out, those you all know.

You will not be called according to the paper to move on the Reservation for two or three years; then is secured to you your right to fish, to get roots and berries, and to kill game; then your payments are secured to you as agreed; then your schools, your shops, and physician and the other things we have promised you are secured; then the salaries, the houses and the ten acre farms of your chiefs are secured to him.

Then there is another article if any of you get into debt then payments cannot be taken for your debts; every Indian must pay his own debts.

Then you promise next to be friendly with other tribes and the whites.

237 Last you are to drink no whiskey and do all you can to prevent others doing it; and also those who drink whiskey will not be paid their annuities.

I have thus given the substance of the different Treaties. Shall it be read over in detail? You have already heard it not once but two or three times. It can be read over Article by Article and the Interpreters can state to you whether it is what you are promised. If there is anyone present who wishes to speak let him do so before we go on with this business. Let Looking Glass speak.

Looking Glass said: I am now going to speak. From those who have been speaking, they have been listening to us from above and from the ground. A long time ago the Great Spirit spoke to my children. I am from the body of my parents and I sat on a good place. The Great Spirit spoke to his children the Laws, will track on the ground strait and after that there have been tracks on my ground and after that the big Chief, the President, his ground was stept on in the same way and for that reason I am not going there to trample on his grounds and I do not expect anyone to tramp on mine.

I have great respect for my friends, he sees your eyes and your hearts, and that is the reason all this people are his children. Why do you want to separate my children and scatter them all over the country? I do not go into your country and scatter your children in every direction.

It is for me to speak for these people my children, that is what I say. The Big Chief speaks to his children and I also speak to my children and tell them what to do; and that is what we are talking about; you see where the Sun is. I never go where the whites are and mix with them and talk with them.

I am already named from above, by the Supreme Being, my heart is with the country. I live upon and head, that is the

reason my heart tells me to say where my children shall go. I want you to look well to what I have shown you.

I want to know if an Agent will stay up in my country?

Gov. Stevens. As long as there are people.

Looking Glass. Will the Agent be there that long to keep the whites from pushing into our country?

Gen. Palmer said: Certainly.

Looking Glass. Will you mark the piece of country that I have marked and say the Agent shall keep the whites out?

Gen. Palmer. None will be permitted to go there but the agent and the persons employed, without your consent.

Looking Glass. It is not for nothing I am speaking to my chiefs. It is to talk strait, it is just as if I were to see the President and talk to him it would be straight, that is just what I want, that you talk straight from the President. Look at my talk. I am going to talk straight. When I hear your talk it goes to my heart. I am not like those people [pointing about] who hang their heads and say nothing. We will have a short talk, not a long one. (After a silence of a few minutes the)

Young Chief said: That is the reason I told the Governor to let it be till another time, till we know what the Looking Glass would say. I heard that Looking Glass was coming.

Governor Stevens. I will say to the Young Chief, let Looking Glass have time to think, he is thinking now in order that he may speak, he will speak straight and from his heart. We will wait now till we have heard Looking Glass speak.

238 Looking Glass. The line of the Cayuse Reservation will be where the trail crosses the Walla Walla, thence in a straight line to the Umatilla below Wm. McKay's house, from thence north of the butte, straight to John Day's River. The reason why that shall be the line is that they want more room for their horses and cattle. (After a pause of a few moments he continued.) By what time will you build the mill?

Gov. Stevens. The year they move on, when the President approves the Treaty.

Looking Glass. Yes! Now we will talk. We have talked before. You said you would send this talk to the President and if he says yes, then it is right. Yes. And I will listen to what the President says and if he says yes, then we will talk.

Billy. This is just putting it off further and making us more tired. You have no pity on us.

Three Feathers. We cannot understand back here. Why don't he speak louder. Looking Glass is speaking, we look upon him as a Chief.

Billy. I thought we had appointed Lawyer our head Chief and he was to do our talking, that is the reason why I have spoken.

Gov. Stevens. I will say to my brother the Looking Glass that everything we say and do is sent to the President. What Looking Glass has said and what I say now goes to the President, but can I send anything to the President unless you agree to it? Can the President act? We have met that we may agree upon something then it goes to the President. The Priest has sent me and my brother to make this very agreement. We must agree upon something then it goes to the President and if he thinks it is good then he approves of it. I ask L. Glass to look upon it and see that it cannot be done any other way.

Gen. Palmer. Our great Chief, the President, directed me and my brother to come here. We have been here 19 days, we have been talking a great deal. That talk has been for your good. We came here to talk straight, we have shown you our hearts, we will not lie to you. Yesterday we made a bargain with the Cayuses, the Walla Wallas, and the Umatillas and the day before with the Nez Perces. The Looking Glass was not here but we did not forget him. We know that when he understands it all he will say yes. This morning we made a bargain with the Yakamas, they with these others all say yes. We expect the Looking Glass and his people will all say yes. We have told these people and it is so said in the paper that their horses and cattle would be allowed to graze outside of the reservation the same as our people when it was not occupied by whites. If we change the line to where he says we would have to stay here two or three days more to arrange the paper. We are all tired. You are tired. Shall we say one thing today and another thing tomorrow?

They have said yes! My heart says yes to the line that was shown yesterday and today. All things will be done as we told you. Shall we do so. My heart says yes. I have nothing more to say.

Looking Glass. Yes! Let it be so.

Eagle from the Light. When I spoke to you before I said that I should speak slowly and I have been thinking about what to say, but I don't know yet what to say. These people have been talking among themselfs as though there was two and when I heard what they had to say I said very well; let us go as two.

Looking Glass. What I showed these people when I came here. I spoke beyond it [referring to the map] and you have said that this talk you would send to the President and he will see it.

You see my body it is not divided, it is one body as these are all my children [pointing about]. They have all got horses and cattle that is the reason I made it larger.

239 I want you to talk plain just like the Light and then I will say yes. That is all I have to say now.

Gov. Stevens. I will ask of Looking Glass whether he has been told of our council. Looking Glass knows that in this reservation settlers cannot go, that he can graze his cattle outside of the reservation on lands not claimed by settlers, that he can catch fish at any of the fishing stations, that he can kill game and can go to Buffalo when he pleases, that he can get roots and berries on any of the lands not occupied by settlers. He knows what the Reservation is: that we promise him two mills, a saw and a grist mill, two schools and a blacksmith; that we give him a physician, and all the other things that have been spoken of; the people all know it, it has been read over two or three times.

This Reservation is in his own country. I ask Looking Glass is not this talking straight? We send all this to the President and besides this we pay a certain sum of which you all know; we have been looking for him ever since we have been here; Lawyer will recollect that I have been enquiring when will Looking Glass come? We wanted him to come.

Those who go to the Buffalo are all my children. I am going to see the Blackfeet next moon. The Blackfeet had stolen some of his horses, but he got them back again. I heard the story last night. He killed some of their men. I know that Looking Glass wants me to go and make peace in that country. Let us first agree here.

Gen. Palmer. We buy your country and pay you for it and give the most of it back to you again.

Looking Glass. You have said to me that the whites shall not go over that line, none shall go into that country and this you said and it is said: And you will show to the President what we have said.

Gov. Stevens. I understand Looking Glass has consented with the other Chiefs. The papers are now ready to sign; here I will particularly speak to Kamahkan or the head Chief of the Yakamas. Are you ready?

Young Chief. What the Looking Glass says, I say.

Gov. Stevens. I ask you whether you are ready to sign? I stated that whatever the Looking Glass said and we said would go to the President. We agreed upon a line yesterday and the day before. The papers are drawn. We ask are you now ready to sign those papers and let them go to the President.

Looking Glass. That he said yes to his line.

Gov. Stevens. Looking Glass is satisfied with the Nez Perce line, the Young Chief and Pe-pe-mox-mox yesterday agreed to the Umatilla reserve.

Looking Glass. I said yes to the line I marked myself, not to your line.

Gov. Stevens. I will say to the Looking Glass, we cannot agree.

Gen. Palmer. I would say to the Looking Glass, what use is it to purchase his country and give it all back again. We did not come here to talk like boys. We don't wish to part with a misunderstanding.

The Nez Perces, the Walla Wallas, the Cayuses, and the Umatillas agree to the boundaries as we have marked. Do you wish to throw all we have said to you behind you? Shall we like boys say yes today and no tomorrow? Pe-pe-mox-mox, Young Chief, and the Nez Perces say yes! None of their people say no! Why do we talk so much about it? I have done.

Young Chief. The President is your Chief and you do what he tells you.

That is the reason the Looking Glass marked out the line he wanted; he is the head Chief.

Looking Glass. It was my children that spoke yesterday and now I come and hear them speak. I asked my children what was their hurry? They knew that I was coming. Why did they run and speak till I came; that is the reason I marked it bigger. I wanted to talk with you and have you talk with me. And after that your talk and my talk will go to the President.

Gen. Palmer. I will say to my brother that I did not know that he was absent when we made our minds to come here, and set the time. My brother and myself come here and we come a long way. We have been here a long time. We were not in a hurry, these people wanted to go home, they had fields of wheat, and of potatoes, the weeds were growing up, they wanted to go home, there was no one at home to take care of the fields. We have other persons to see besides these.

My brother has to go to the Blackfoot country and make peace. He wanted to say to them: You shall not steal these peoples' horses; you shall not make war upon them; these are the reasons we talk. We talk because our Great Chief told us.

The papers have not been signed, they had not forgotten him nor had we. Shall all our efforts to protect them be destroyed? Shall our talk be thrown away? If the Looking Glass is a Chief I hope he will act as a Chief acts for the good of his people.

If we were to say yes to his line our Chief would say No! but if we shall say the line we have marked we believe our Chief will say Yes. Which will you do, take that line or have it all thrown away? Let us act like wise men and not part without doing good for each other.

Looking Glass. I am not going to say any more today.

Gen. Palmer. If the Nez Perces are not ready they can talk among themselfs and come tomorrow.

If the Cayuses, the Walla Wallas, and Umatillas are ready to do what yesterday they said they would, then the paper is ready for them to sign, and tonight they can get their goods and go home when they please.

The paper is also ready for the Yakamas if they choose to sign it they can do so.

Gov. Stevens. The Council will now adjourn till Monday morning and I trust by that time Looking Glass will have thought the matter over and we will be able to agree.

241 Monday, June 11th

Council opened at 11 o'clock.

Gov. Stevens said: My children, we have met today for the last time. Every man here present has agreed to a treaty in council. The Nez Perc'es agreed to a treaty. Not one man spoke against it. All agreed that the head Chief would speak for you. You were all called upon to speak. I called upon Joseph to speak and he spoke: "I have a good heart," said Joseph, "what the Lawyer says let it be."

The Eagle-from-the-light said: "The head chief Lawyer had spoken so be it."

The Red Wolf said: "What the Lawyer has said be it so, he is our head chief."

Said U-ute-sin-ma-le-kin "my chief has spoken for me." Every man said, I say again, "Lawyer is our chief." "I agree to the treaty." So said the Cayuses, the Walla Wallas, the Umatillas, and the Yakamas. The Young Chief and Stickuss said, "we pledged our words, we agree."

We all expect that you all will do what you promised to do. We don't believe you will break your word and make us ashamed of you. I don't believe we shall have to say to the President, "you have promised and then broken your promise."

No! We know that you will keep your word. First the Nez Perces—I shall call upon Lawyer the head chief, and then I shall call on the other chiefs to sign.

Will Lawyer now come forward. (He then came forward and signed the Treaty.) Now I call upon Looking Glass and Joseph to sign the Treaty. (After they had affixed their names James and the other chiefs and head men put their names to it.)

Gov. Stevens: My Brothers, the Treaties have now all been signed. They will be sent to the President. All the speeches on both sides will be sent to the President. The President will see that everything has been fairly explained and agreed upon between us. He will see that you have all acted like men here. He won't find any fault even with Looking Glass.

Looking Glass came back after a long absence and asked time to look at the treaty. Time was given him to think it over. He was satisfied and we find his name next to his head chief's.

I think the President will approve what we have done. We will let you know when we hear from him, which will be sometime next year.

We have some few presents to give you which will be distributed upon your leaving the ground. They are designed for those who need them most. You will dispose of them in that way.

Thenceforth you will have me for your Great Chief, Mr. Tappen for your Agent, and Mr. Craig for your Interpreter.

The Yakamas will have Mr. Bolon for their Agent. The Walla Wallas, Cayuses, and Umatillas will look to Gen'l Palmer hereafter.

There is another point which I wish to speak about from my heart. It is the Blackfoot Council. My brother, the Looking Glass, knows that we want peace on those Buffalo plains. You all know it. I think I can make peace there.

Nez-Perce's: Nearly one fourth of your people live there. I want some chiefs of courage and character, and one hundred of your braves to go to that council. I say to Lawyer, the head chief, of the Nez Perce's, I would be glad to have him go. I would be glad to have Looking Glass go. Arrange this among yourselfs. I hope and trust that Mr. Craig will go with you.

242 The Cayuses, Walla Wallas, Umatillas, and Yakamas, I would like to have some of them also.

We shall have chiefs and braves from the Flatheads, the Coeurdie Jains, Coo-too-may's and I hope from the Spokanes. The Blackfeet have promised to meet you there in Council and when we meet there will be peace among you. Think this mater over and decide for yourselfs.

Gen'l Palmer: My Brothers, I wish to say a few words before we part. When we came here we didn't know the hearts of your people. We hate been together a long time and have talked a great deal. We have listened to what you have said, and you have listened to what we have said. *Sometimes* you have sometimes been afraid that we were not working for your good. Your willingness to come forward and sign the Treaty is evidence that you have decided that we intended to do you good. We have shown you our hearts and you have shown us yours. We commenced a long way apart but now we are together. We are one. I hope we shall always remain as one and have but one heart.

From this time we expect that we and you will always be at peace. We not only want you to be at peace with all whites but

we want you to be at peace with yourself. We didn't come here to divide you or to induce one to be against another. Why should you be at war with each other? You may live at separate place, but your hearts would be as one and help each other. The chiefs and old men should give good council to their young people. The young men should listen to the old men and be advised by them. The young people should strive to assist the old people. Take care of them. It is the duty of the old people when they see these boys act foolish to council them. It is the duty of all to take care of your women and children, furnish them with food and with clothing.

I say again! Take care of your old people, supply their lodges with provisions, for you will soon be old yourself and will need help.

We expect you will all leave this ground with good hearts and if there are any among you that have bad hearts, advise them to throw them away. If your people are foolish and do wrong it is your duty as chiefs to punish them for it. We shall try and prevent the whites from doing wrong to the Indians, and you must prevent your people from doing wrong to the whites.

The Treaty provides that if an Indian steals the property of the whites it may be paid for from the annuities. It also provides that if your people steal from other tribes it will be paid for in the same way. We also provide that if the whites take the property of an Indian it must be paid for. The Agent who is the proper person to apply to in case an injury is done you and when any of your people do wrong to the whites, then it is the duty of the chiefs to punish the offender. If one does wrong to an individual he is not to redress his own wrong but he is to submit it to the chiefs or his council, or to the Agent and abide by their decision. It is to be hoped that your people will do no wrong. Let us try and prevent it if we can. We expect the chiefs to look to this and if there is any of their people who have stolen property and have it on hand it is my heart they should give it up to the Agent, and the Agent will do all he can to return your property.

We have, my brother, told you that we had a few goods to give you. Your people are not all here to receive them. We have been here a long time and can't remain to see you all. We shall therefore give those goods into the hands of the chiefs and we expect the Head Chiefs to call his chiefs and see them distributed justly.

My Brother, Gov. Stevens, will furnish the Nez Perce's with goods. Mr. Thompson and myself will furnish the Cayuse, Walla Walla, and Umatillas with goods. And when we get through talking the head chiefs of the Cayuses, Walla Walla, Umatilla will go receive the goods and take care of them.

243 We have not got a great many goods but when this paper goes to the President and he says it is good then we will supply you with other goods, and we shall do all things that we have agreed upon. Mr. Thompson will be the Agent for the Cayuses, Walla Wallas, and the Umatillas.

When we part we will all go to our homes with good hearts towards each other. When we have built the blacksmith shops, sawmills, and chiefs home and other things we have agreed to. Then we expect you will go upon the reservation, and when you go and if you leave your little farms and improvements they will be valued and you will be paid for them.

I shall go home with a good heart towards all your people, and I shall be very sorry if I hear your people have done wrong. I have nothing more to say at present.

If any of you have anything to say we are ready to listen to you.

Gov. Stevens: I will say to the Nez Perce's, I hope to visit them in their own country when I come back from the Blackfoot Council. I hope also to visit the Yakamas on my return.

The Cayuses, Walla Wallas, and Umatillas will look to Gen. Palmer hereafter. They will also look upon me as their friend.

Tin-tin-meet-see: I understand you well. We are never the beginners in doing wrong to the whites. All Indians here understood well what has been said. When your white children come into this country they do things at random [to the Indians]. You have heard all that has been said and now let us go home and do right.

244 Eagle of the Light: My forefathers are all dead. I only am left, there is but the encampment remaining, it is good to hear and think of each other. We have heard good words spoken from the President to take care of us poor people well. His children's way you have come here to see. For days our bodies have been together, also the night an also for years, also for winters. You have shown that he likes his red children. I do not want our hearts to come together wrong, but right, and remain so as long as we are a people, and we will stop the bad people on both sides. The Lord will reward us both when our hearts are good that we will look and care for each other. The old and the young will go right and then all will be right—from little could come great difficulties—that is the reason we speak from small things to big ones—that is all at present.

James said: It is not from anything bad that I have not spoken. It is as though the man I speak of is not of the party. When the white people came to my country Mr. See told me when he came there he was coming for good and not for bad. When the

white people come and they would come in great numbers do not do anything bad to them. I have never done bad to them. I wish Mr. Craig to stay with us and hear the Indians speak for he could speak to our people and they could understand him—therefore I wish him to stay.

Red Grizzly said: I like your talk—you talk well. When you have finished I like it still, this you have brought us from the President. I like that talk my friends. From the time I spoke here I have been sick at heart. This man who has just now spoken, he spoke a little longer because he knows how to speak and there is also another who has just come, the Looking Glass, they speak straight and friendly. You have also spoken friendly, and shown them your heart plainly—not that I am a good man that I like it. My heart is glad as though I see your heart when I hear your words. What I have good to speak I have not spoke yet (here he was interrupted by the Indians when the Red Owl said the young chief wished to say that he wanted you to stop the whites from taking their horses or cattle and if my horses go across the line of the reservation which is a small one I do not want these horses and cattle to be taken off because they are over the line).

Gen. Palmer said: My brethren, this man has said from little things grow great ones. It is true, it is so—a single word spoken unkindly leads to a difficulty. It would be better if we always would not do or say bad things, but if little things are done wrong we should try and forget them. I have been told that there are sometimes difficulties among the Indians in reference to their mode of worship. That is a thing that we do not interfere with. We are willing to let the people worship God as they please. We do not say do this or do that. If their heart is to sing or pray and preach it is good, if others say it is not our heart to pray and to preach it is good, but we want all people to be good people. If those who sing and pray think it is good, let them to try to convince others. Talk kindly, treat them kindly and convince them they will do right. Some will worship one way and some will worship another—do not quarrel about it but worship or not worship, we want you to have good hearts. I have done.

Looking Glass Says: As so many are now working, some other time you and I will have a heart. I have a good head and a good heart, by and by we will have a talk.

245 Council adjourned sine die at three o'clock.

We hereby certify the above to be a true record of the proceedings.

JAMES DOTY,
Secty. to Treaties in W. Terry.
WM. C. McKAY,
Secty. to Treaties in O. T.

Approved:
ISAAC I. STEVENS,
Gov. & Supt. W. T.
JOEL PALMER,
Supt. Ind. Affairs for O. T.

246 In the Supreme Court of the State of Washington

[Title omitted.]

Clerk's certificate

STATE OF WASHINGTON,
County of Thurston, ss:

I, Benj. T. Hart, Clerk of the Supreme Court of the State of Washington, do hereby certify that the foregoing is a full, true and correct copy of the Stipulation and Order of the Chief Justice of the Supreme Court of the State of Washington to send the original Statement of Facts and Exhibits to the Clerk of the Supreme Court of the United States, and attached hereto are the said original Statement of Facts and Exhibits.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court this 23 day of July 1941.

BENJ. T. HART,
Benj. T. Hart,

Clerk of the Supreme Court of the State of Washington.

247 Supreme Court of the United States

October Term, 1941

No. 318

[Title omitted.]

Statement of the points on which appellant intends to rely and the designation of the parts of the record to be printed

Filed July 28, 1941

Comes now the appellant and states that the points upon which he intends to rely in this Court in this case are as follows:

I

Appellant adopts his assignment of errors as his points to be relied upon herein which said assignment of errors he repeats and incorporates as a whole herein.

II

Appellant further states that he designates, as the parts of the record which he thinks necessary for the consideration of the said points, all the papers designated in his praecipe, which together constitute the whole of the record as filed.

Dated this 30th day of June 1941.

NATHAN R. MARGOLD,
Solicitor,
Department of the Interior.
KENNETH R. L. SIMMONS,
District Counsel,
Office of the Solicitor, Department of Interior.
Counsel for Appellant.
CHARLES FAHY,
Acting Solicitor General.

[Endorsement on cover:] Enter Attorney General. File No. 45646. Washington, Supreme Court. Term No. 318. Sampson Tulee, Appellant vs. State of Washington. Filed July 28, 1941. Term No. 318 O. T. 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941